

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DRFP LLC, D/B/A SKYE)	
VENTURES,)	
)	
PLAINTIFF,)	CASE NO. 2:04-cv-0793
)	
vs.)	
)	
REPUBLICA BOLIVARIANA)	
DE VENEZUELA, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

VOLUME 1
TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDMUND A. SARGUS, JR.
MONDAY, FEBRUARY 1, 2016; 8:45 A.M.
COLUMBUS, OHIO

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Monday Morning Session

February 1, 2016

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COURTROOM DEPUTY CLERK: C-2-04-793, DRFP, LLC, d/b/a
Skye Ventures vs. Republica Bolivariana de Venezuela.

THE COURT: Counsel, good morning to all of you. I
understand that we are ready to, and prepared to, proceed with
testimony, but there is a preliminary matter that one of you
would like to address with me.

Mr. Schwartz, good morning.

MR. SCHWARTZ: Good morning, Your Honor. Thank you
very much for having this opportunity.

You made a comment in passing during the pretrial
conference on Friday regarding the jurisdictional issue in the
case that we believe warrants some brief discussion. It
doesn't necessitate any argument or any ruling at this time,
but a brief mention of a few points.

When this case was before the Sixth Circuit, which was
before your time on the case, Your Honor, and before many of
ours, the Sixth Circuit rendered its ruling in a matter where
the case was before it on the pleadings and assumed in that
procedural posture that the alleged promissory notes were
valid, and then proceeded on that basis to conduct its
analysis. But that was a hypothetical state of affairs based
on allegations of a complaint, and we're now moving from the

1 realm of the hypothetical to the realm of the real.

2 And the upshot of the Sixth Circuit's decision is that,
3 in order for there to be jurisdiction under the Foreign
4 Sovereign Immunities Act, the Plaintiff has to show that the
5 notes are real. So, we just want to make clear, and that there
6 are no surprises, that from our standpoint that very much
7 remains an issue in the case.

8 THE COURT: Well, I think you'd agree that we were
9 framing triable issues in the final pretrial conference. The
10 validity of the notes is one of the triable issues. I think
11 what your contention would be is that, if you can prove the
12 invalidity, you will win not only on the merits, but you will
13 deprive the Court of jurisdiction. But the trouble is it still
14 means the validity of the notes is the same triable issue. Do
15 you agree?

16 MR. SCHWARTZ: It's absolutely clear, if the Plaintiff
17 can prove that the notes are real, then it can overcome this
18 part of the jurisdictional issue. But it's important just that
19 we clarify that, because we passed it very quickly at the
20 pretrial conference. It doesn't affect the evidence at all.
21 It's the same evidence.

22 THE COURT: Right. So, I'll note that. But I think
23 we both agree it's the same -- the same issues will be before
24 the Court, but on two separate legal theories in the event you
25 can persuade me that the notes were invalid from the beginning.

1 MR. SCHWARTZ: Yeah. From our standpoint -- One of
2 the reasons that I raised this is, if the Plaintiff has any
3 theory under which it might try to prevail without showing the
4 notes are real, it will be our same position there is no
5 jurisdiction.

6 THE COURT: Well, I'm not deciding anything at this
7 point. We may have to reserve the legal aspects of this, but
8 I'll note your mentioning of the final decision in the Sixth
9 Circuit.

10 MR. SCHWARTZ: We're not asking for validity. I'm
11 very clear about that.

12 One other aspect of the Sixth Circuit decision -- It's
13 the last thing I have to say -- as we were reviewing this in
14 connection with the jurisdictional question I've just
15 addressed, there's an observation that the Sixth Circuit made
16 in its decision that's another subject we think the Court
17 should bear in mind going forward. Again, no ruling required
18 at this time. We're not asking for one.

19 But the Court did say -- and this is material to some of
20 the issues in the case -- that neither the first Attorney
21 General opinion, nor the second one, is settled law, in
22 Venezuela, binding the parties to this litigation. And I'm not
23 going to make any argument in any detail about the implications
24 of that statement, but I think it is something the Court should
25 bear in mind, and it concerns some of the subjects that we

1 touched on briefly on Friday.

2 That's all I have to say.

3 THE COURT: Very good. Thank you.

4 MR. SCHWARTZ: Thank you.

5 THE COURT: With that, I think we're ready for the
6 first witness.

7 Mr. Cooper, Mr. Elliott, you may call your first
8 witness.

9 MR. ELLIOTT: Your Honor, before the first witness is
10 called, I'd like to, just because of the space constraints
11 here, introduce the representative of Skye Ventures, Dave
12 Richards, who will be sitting in the back of the courtroom.

13 MR. RICHARDS: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. ELLIOTT: Thank you, Your Honor.

16 THE COURT: Very good.

17 MR. C. COOPER: Good morning, Your Honor.

18 The Plaintiff's first witness will be Luis Alcalde.

19 THE COURT: If you will come forward.

20 One thing that has changed over time, where
21 normally -- Thank you for getting the witness, but normally the
22 Court's security officers will stay in the courtroom. So, if
23 you could have someone else arrange for the witness to appear,
24 that would be helpful. And that's on both sides.

25 MR. C. COOPER: Thank you, Your Honor.

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LUIS MANUEL ALCALDE

Called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. C. COOPER:

Q. Mr. Alcalde, would you begin by stating your full name for the record?

A. Luis Manuel Alcalde.

Q. Could you spell your last name for the court reporter?

A. A-l-c-a-l-d-e.

Q. Thank you.

Mr. Alcalde, are you familiar with the dispute that brings us to this court today?

A. I am.

Q. In general terms, what is your connection to this dispute?

A. I was hired by Skye Ventures, sometime in 2004, 2003, to investigate the opinion of the Attorney General of Venezuela, related matters, and then to file a lawsuit against the Republic of Venezuela.

Q. Before we delve into that, let's begin with some background information.

Mr. Alcalde, where were you born?

A. I was born in Havana, Cuba.

1 Q. And where do you live now?

2 A. Columbus, Ohio.

3 Q. How long have you lived in Central Ohio?

4 A. I've lived in Central Ohio -- With the exception of
5 three years when I was in the United States Army Judge Advocate
6 General's Corps, I've lived in Columbus, Ohio, or Central Ohio,
7 since 1971.

8 Q. What languages do you read and speak?

9 A. Spanish and English.

10 Q. Are you fluent in Spanish?

11 A. Yes.

12 Q. Both reading it and speaking it?

13 A. Yes.

14 Q. Let's turn to your professional background, which you
15 mentioned a little bit about. I would like to have you begin
16 by describing your education for the Court, please.

17 A. Okay. So, I, of course, graduated from high school. I
18 graduated from Reynoldsburg High School. I have a bachelor of
19 arts in political science from The Ohio State University. I
20 have a J.D. from The Ohio State University College of Law. And
21 I have a master's of law in business and tax from Capital
22 University Law School.

23 Q. Are you licensed to practice law in Ohio?

24 A. Yes, I am.

25 Q. When did you become licensed to practice law in the

1 State of Ohio?

2 A. 1980.

3 Q. Could you describe your professional career after you
4 obtained your law license?

5 A. Yes.

6 Q. After law school. I'm sorry.

7 A. Yes. I went into the United States Army. I was a JAG
8 officer with the Third Infantry Division in West Germany. I
9 spent 14 months as a prosecutor, essentially trying felony
10 criminal cases. Then I spent 16 or so months in the United
11 States Army Trial Defense Service, in Germany, essentially
12 defending felony criminal cases.

13 After that, I came back to Columbus. I started working
14 for the Ohio Attorney General's Office. Tony Celebrezze was
15 the Attorney General at the time. I spent a year in a section
16 that was then called Administrative -- No. It was called
17 Government Agencies. And we provided advice to numerous
18 administrative agencies of the State of Ohio. I was
19 responsible for several of those agencies.

20 The Attorney General then started a section to enforce
21 Ohio's prevailing wage law. I became the first chief of that
22 section, and I did that for a year.

23 Then I spent a year as the Assistant Chief of Medicaid
24 Fraud, where I supervised the financial auditors and worked
25 with a grand jury investigating Medicaid fraud.

1 I then left the Attorney General's Office, and I went to
2 Crabbe, Brown and James, where I spent 22 years or so at that
3 law firm. My legal career there sort of evolved. I started
4 doing -- About two years, I started doing a lot of accident
5 litigation. I then started doing a lot of products liability
6 litigation.

7 I worked with the -- We were representing Chrysler at
8 the time, which is where I met David Richards. He was part of
9 Crabbe Brown at that time. And we worked together, with
10 Charlie Brown, defending Jeep rollover cases and a number of
11 product liability cases involving Chrysler products.

12 My career then evolved again. I started representing a
13 company that was doing a lot of trademark investigations, and I
14 sort of became their outside general counsel. That company was
15 PICA. I was working with them, doing sort of not criminal
16 investigations, but very akin to criminal investigations where
17 we were trying ferret out counterfeiters, making buys, and
18 working our way up the chain. And I was providing the legal
19 advice for those investigations.

20 That also started me doing some international work. The
21 company was doing work all over the world. I represented the
22 State of Ohio in three class-action lawsuits against all the
23 mental state hospitals. I represented the City of Columbus in
24 a 1983 action involving police activities.

25 I then started getting asked to do business and

1 commercial litigation. I didn't have a background in business.
2 So, 19 years or so after I got my J.D., I went back to law
3 school; and I got an LL.M. in business and tax, not necessarily
4 to do tax, but simply so I could understand business better.

5 So, my practice, after that, changed to a combination of
6 I was still doing a lot of litigation, but I was doing a lot of
7 sort of business and some business litigation, which, you know,
8 brings us up to -- I don't know -- maybe about 2003, when I
9 became involved with this case because of my international
10 background and my Spanish and some of the other things.

11 I was at Crabbe Brown 'til 2008. In 2008, I left to
12 work with PICA. I worked with PICA for about ten or eleven
13 months. Mr. Volpi and I, who I had represented for a number of
14 years, had a dispute about the nature of how the business
15 should go, and so I left.

16 I then spent the next three years representing Motley
17 Rice, which I had represented in the lead paint litigation
18 throughout the State of Ohio. They were then in a lawsuit with
19 Sherwin Williams and Jones Day. So, I essentially had one
20 case, which was representing Motley Rice. I hired Kegler Brown
21 to be my co-counsel in that case. And I spent the next
22 two-and-a-half to three years essentially traveling to Cuba,
23 trying to develop a lot of ties and a lot of business with
24 respect to Cuba, sort of anticipating the current scenario.

25 In 2011, I went to work for Kegler Brown as the team

1 leader for Latin America and started a practice focused on
2 Cuba, as well.

3 My work at Kegler Brown is sort of multi-disciplinary.
4 I get involved in cases that involve a variety of issues:
5 Civil, regulatory, criminal; for example, if there are expert
6 control violations and those sort of things. I have
7 done -- I've done FCPA investigations, internal corporate
8 investigations with respect to large companies in Asia, and I
9 get involved in basically anything that has to do with Latin
10 America or Spanish because I spent a significant amount of time
11 also writing documents, legal documents, in English and
12 Spanish.

13 Q. And does that bring us current on your legal career?

14 A. I think so.

15 Q. Let's shift gears. Mr. Alcalde, are you familiar with
16 the word "Bandagro"?

17 A. Yes.

18 Q. What does "Bandagro" mean?

19 A. Well, "Bandagro" means two things to me. It means the
20 Bandagro Bank in Venezuela or the notes that are at issue, as
21 well. So, sometimes I refer to the Bandagro notes as the notes
22 at issue in this litigation. Obviously, it all initiates with
23 the Bandagro Bank.

24 Q. And is the word "Bandagro" a shortened name for the
25 bank?

1 A. Yes.

2 Q. What is the full name?

3 A. Banco de Desarrollo Agropecuario.

4 Q. We'll refer to it as "Bandagro" --

5 A. Yes.

6 Q. -- for simplicity.

7 Approximately when did you first hear the name
8 "Bandagro"?

9 A. I would say sometime in the fall, early winter, of 2003.
10 The exact date, I'm not sure. But either David Richards or
11 John Kennedy -- well, probably David Richards -- mentioned to
12 me that there was something that he wanted me to look at with
13 respect to a matter in Venezuela.

14 Q. In 2003, you were employed at Crabbe Brown at the time;
15 is that correct?

16 A. Correct.

17 Q. Have you told the Court all you recall from your first
18 recollections of hearing about Bandagro?

19 A. Well, I mean, I recall that I was given a document to
20 read at some point in time, which turned out to be a copy of
21 the opinion of the Attorney General of Venezuela. And I was
22 asked to call an attorney in Caracas, Venezuela, by the name of
23 Miguel Jacir.

24 And I recall that I was in John Kennedy's office, and we
25 made a call to Miguel Jacir. He had been -- I think the time

1 had been prearranged. I don't recall if I had prearranged the
2 time of the call or if someone else had, but there was a set
3 time for me to call Dr. Jacir. And I recall that John Kennedy
4 and Dave Richards were in the office at the time.

5 Q. Were you asked to undertake any specific tasks with
6 respect to, or that related to, Bandagro?

7 A. Well, yes. I mean, it was sort of an evolving -- I was
8 initially asked to read the document that I was given. I was
9 initially asked to talk to Dr. Jacir on the telephone and sort
10 of start getting an understanding of the meaning and effect of
11 this opinion that the Attorney General of Venezuela had issued.

12 Then, after that initial phone call, after that initial
13 reading of the decision, which I was not reading in any
14 context, of course, I started having more communications with
15 Dr. Jacir in sort of trying to get an understanding of the
16 context of this opinion.

17 I recall that he had sent me a copy of the text of the
18 law that applied to the Attorney General of Venezuela which was
19 at issue. I then started doing Internet searches for what I
20 could learn about this decision and the Bandagro Bank. And I
21 would guess I was engaged in a process of learning both facts
22 and law with respect to this opinion, the circumstances
23 surrounding the opinion, the aftermath of the opinion, which
24 culminated in a trip that Mr. Richards and I took to Caracas,
25 Venezuela.

1 I believe our first trip was sometime in April of 2004,
2 where I -- I and Mr. Richards spent the better part of -- I
3 think we were there a couple of days, but pretty much the
4 better part of a day and a half, meeting with Dr. Jacir at his
5 house.

6 Later, we went to his office, obtained some documents.
7 Then I had a meeting with Roman Delgado and Oscar Guzman. It
8 was a dinner meeting with Mr. Guzman, who, as I learned, had
9 been the individual that had led the investigation for the
10 Ministry of Finance.

11 Q. I'm going to break those down in a moment and kind of
12 explore those. But, before we do, did you have an
13 understanding of why you were being asked to perform these
14 tasks that you described?

15 A. I didn't have an understanding, initially, other than
16 Mr. Richards thought that this was something that he wanted to
17 get a good understanding about. As this timeline progressed, I
18 understood that Mr. Richards, representing a number of
19 investors, was evaluating whether or not this opinion of the
20 Attorney General of Venezuela was final and binding and whether
21 or not he wanted to invest in the notes that were the subject
22 of the opinion.

23 Q. Okay. Let me pause right there for a second and ask you
24 to look at Exhibits 1 and 2 in Binder Number 1, please. That's
25 Binder Number 1, Exhibits 1 and 2.

1 Mr. Alcalde, you've been handed the original documents
2 of Exhibits 1 and 2. Could you identify those for the record,
3 please?

4 A. Yes. These appear to be the notes that were eventually
5 obtained by Skye Ventures and which I had seen in Europe and
6 then were later delivered to my office at Crabbe, Brown and
7 James.

8 Q. Are the notes designated in some way?

9 A. Yes. One note is designated "7/12," and the other note
10 is designated "8/12."

11 Q. You have the originals in hand.

12 MR. C. COOPER: And, Your Honor, with the Court's
13 permission, we'll retain the originals, but introduce copies to
14 replace them.

15 THE COURT: I assume there is no objection. Is that
16 correct?

17 MR. SCHWARTZ: Well, there is an objection to the
18 extent that any of what's recited in the document would be
19 submitted for the truth of it because --

20 THE COURT: Actually, the witness said -- I think he
21 used the word "purported." At this point, this is what the
22 trial is about, but let's just identify them as where we start.
23 Is that fair enough?

24 MR. SCHWARTZ: There is no question that these are the
25 two notes that the Plaintiff is trying to enforce. There are

1 substantial questions about authenticity and hearsay.

2 THE COURT: I understand. But, in terms of what was
3 just requested by Mr. Cooper, you hold on to the originals.
4 The copies, for now, will suffice. We may have to have some
5 people review the originals. So, they have to be around, but
6 the copies satisfy you, Mr. Schwartz, for now?

7 MR. SCHWARTZ: Yes.

8 THE COURT: Very good.

9 MR. SCHWARTZ: I don't want to have to keep popping up
10 and saying we contest the authenticity and it's pervaded by
11 hearsay.

12 THE COURT: Right.

13 MR. SCHWARTZ: So, hopefully, that will be understood.

14 THE COURT: That is the number-one triable issue in
15 the case. So you don't need to do that.

16 MR. SCHWARTZ: Thank you.

17 THE COURT: Thank you.

18 BY MR. C. COOPER:

19 Q. Mr. Alcalde, you've mentioned in your testimony an
20 Attorney General opinion, or an opinion that you had reviewed.
21 Did you receive a copy of this opinion?

22 A. Yes.

23 Q. Do you recall approximately when you received a copy of
24 it?

25 A. I don't recall approximately when, but I'm assuming

1 sometime in that October-November-December time period.

2 Q. Of what year?

3 A. 2003.

4 MR. C. COOPER: Could I ask that the witness be given
5 Exhibit 3 from Binder 1, please?

6 THE COURT: It's Binder 2.

7 MR. C. COOPER: I'm sorry, Your Honor. We do have
8 that -- We had combined them into 1 and 2.

9 That's correct.

10 BY MR. C. COOPER:

11 Q. Mr. Alcalde, could you identify exhibit -- Plaintiff's
12 Exhibit 3, please?

13 A. Well, part -- The first 32 pages or so -- Okay. Well,
14 here's what is confusing me. You've given me an English one.
15 And, of course, I didn't see an English one until much later.

16 So, the first part of this appears to be a translation
17 of the opinion of the Attorney General of October 3, 2003.

18 Then we appear to have a copy, in Spanish, of the
19 opinion of the Attorney General of Venezuela dated October 3,
20 2003.

21 Then we appear to have another copy of the opinion of
22 the Attorney General of Venezuela dated October 3, 2003.

23 THE COURT: Mr. Schwartz, is there an objection?

24 MR. SCHWARTZ: No. I'm just trying to --

25 THE COURT: That's all right. You can stand.

1 MR. SCHWARTZ: -- take stock of the bulk of this
2 exhibit.

3 THE WITNESS: Likewise.

4 THE COURT: Well, just for my edification, we start
5 with the English version --

6 THE WITNESS: Right.

7 THE COURT: -- that Mr. Alcalde just mentioned.

8 The translation is not disputed; is that correct?

9 MR. SCHWARTZ: The first part of this, I don't believe
10 so. But this is a very large document. And actually embedded
11 within -- By the way, I hope it's okay for me to be speaking
12 from here.

13 THE COURT: Yes.

14 MR. SCHWARTZ: Embedded within this document are many
15 objectionable aspects, but I'm trying not to disrupt the
16 examination any more than is necessary.

17 THE COURT: All right.

18 MR. C. COOPER: Your Honor, just for clarification,
19 what we've done with this translation is, we've taken
20 Venezuela's translation, Defendant's translation, and used that
21 in this case.

22 THE COURT: So, as far as this document, there is not
23 a dispute as to the interpretation?

24 MR. SCHWARTZ: As far as the English translation that
25 appears at the outset of this voluminous exhibit, that's

1 correct.

2 THE COURT: Okay.

3 MR. C. COOPER: There will be an explanation of one
4 word at the end of this; but for the bulk of the document, the
5 translation, I don't believe there is a dispute.

6 THE COURT: All right. Very good.

7 THE WITNESS: Then the last copy of the October 3rd
8 opinion appears to be one copy in which Oscar Guzman has
9 certified each page of the opinion.

10 BY MR. C. COOPER:

11 Q. I'm going to ask you, for now, to just set aside that,
12 the October 3, 2003, opinion. And I want to go back and have
13 you walk through, for the Court, the steps that you took. You
14 indicated that you recalled, in the early stages, speaking with
15 an individual named Miguel Jacir?

16 A. Yes.

17 Q. Could you spell his last name for the Court, please?

18 A. J-a-c-i-r.

19 Q. And who was Mr. Jacir?

20 A. Dr. Jacir, as I learned, was the attorney for Gruppo
21 Triad that presented the claim in Venezuela respecting the
22 Bandagro notes at issue.

23 Q. Do you recall approximately when you first spoke with
24 Mr. Jacir?

25 A. Sometime in October-November 2003.

1 Q. What did you discuss in the first conversation?

2 A. Well, frankly, I had a very difficult time understanding
3 Dr. Jacir, but the intent of the telephone call was to discuss
4 the Attorney General opinion and its meaning, impact,
5 relevance.

6 Q. Let me interrupt. Why did you have a difficult time
7 understanding Mr. Jacir?

8 A. Well, I didn't -- I had never met Dr. Jacir; and I
9 didn't realize, of course, when I called him, that he had
10 Parkinson's. And, so, I was asked to call Dr. Jacir. And, you
11 know, he's not an easy person to understand until you realize
12 that he's got Parkinson's and, you know, you attune yourself to
13 his speech pattern. And, since I had no clue, I really had a
14 really hard time. And when you don't know somebody and you're
15 not understanding what they're saying and you don't want to
16 keep saying "Slow down and repeat it," I mean, I did it a
17 couple of times; but, you know, it starts getting embarrassing.

18 So, frankly, you know, when I left that conversation,
19 you know, I jokingly thought that I was pretty sure that David
20 Richards and John Kennedy didn't believe that I really spoke
21 Spanish because I had -- you know, I was not able to really --
22 you know, I said more "I don't know" than anything else.
23 And -- but, you know, we spoke, I'm sure, a few more times. I
24 started getting attune to it.

25 I still didn't know that Dr. Jacir was suffering from

1 Parkinson's until I actually met him in Caracas in April, but
2 he sent me an e-mail with the law. And I started reading that.
3 I started doing my own research. And then, you know, we
4 finally went down there to meet Dr. Jacir.

5 THE COURT: Let me jump in.

6 You refer to him as "Doctor." What is the significance
7 of that title?

8 THE WITNESS: Your Honor, he's not a medical doctor.
9 He's a legal doctor. But, in Latin American countries, unlike
10 the U.S., lawyers go by "Doctor."

11 THE COURT: You could probably convince most of the
12 people in the room to go with that designation.

13 THE WITNESS: I'd almost like to.

14 MR. SCHWARTZ: Or Doctora.

15 THE COURT: But this is the designation all lawyers in
16 Venezuela would use?

17 THE WITNESS: Yes, sir. Doctor, yeah.

18 THE COURT: Thank you.

19 MR. SCHWARTZ: Doctor or Doctora.

20 MR. C. COOPER: Your Honor, we'll see that in the
21 correspondence and pleadings with "Doctor," and then "DRA" for
22 Doctora.

23 THE WITNESS: If I'm referring to a medical doctor,
24 I'll make that difference.

25 THE COURT: Thank you.

1 MR. SCHWARTZ: That won't happen until
2 cross-examination.

3 THE WITNESS: I don't know how to take that.

4 BY MR. C. COOPER:

5 Q. Did you communicate with Dr. Jacir in writing?

6 A. Yes. I think there were a few e-mails. But, really, I
7 mean, bulk -- most of my conversation -- you know, I don't know
8 that I had a lot of communications with Dr. Jacir until I
9 actually went down and met him.

10 MR. C. COOPER: Could I have the witness be handed
11 Exhibit 78, please, in Binder 6?

12 COURTROOM DEPUTY CLERK: Binder --

13 MR. C. COOPER: -- 6.

14 BY MR. C. COOPER:

15 Q. Mr. Alcalde, you've been handed Plaintiff's Exhibit 78.
16 Do you recognize this document?

17 A. Well, it appears to be an e-mail that I sent to Mr.
18 Kennedy and Mr. Richards on or about February 14, 2004. By
19 reading the text that's visible on here, I assume that I had
20 spoken to Dr. Jacir again on the telephone and was relaying
21 what Dr. Jacir had stated.

22 Q. Did you send this e-mail on or about February 14th of
23 2004?

24 A. I would have sent it on the date that is stated on here.

25 Q. Do you have knowledge of the information that's set

1 forth in your e-mail?

2 A. Well, I have knowledge that I spoke to Dr. Jacir and
3 what he told me about the -- "PG" there, Procuradora General,
4 Attorney General.

5 Q. When you practiced at Crabbe Brown --

6 MR. SCHWARTZ: Excuse me for a second.

7 Your Honor, just to make sure we have the ground rules
8 straight for something like this, consistent with the colloquy
9 we had at the pretrial conference, I'm operating under the
10 assumption, when we have a document with an out-of-court
11 statement like this and there is just testimony of this nature,
12 it's not necessary to stand up every time and say "hearsay":
13 we'll deal with it if the document is ever moved into evidence
14 later?

15 THE COURT: Well, as I understand -- I'll hear from
16 both of you on this -- this would otherwise be hearsay, but
17 you're offering this more in an area of reliance, not so much
18 the truth of the matter?

19 MR. C. COOPER: Yes, Your Honor.

20 THE COURT: And your position?

21 MR. SCHWARTZ: If the Plaintiff -- Well, let me back
22 up half a step.

23 As we've said before, and I'm not going to belabor right
24 now, we don't think that there is any place for reliance in the
25 case. And I'm not going to explain it any further.

1 THE COURT: We discussed this on Friday. You
2 understand my view is narrower. It's not reliance in a general
3 sense, but with regard to the opinion we're talking about, and
4 only that.

5 MR. SCHWARTZ: Yes. And that creates trouble from our
6 standpoint because, if there is any reliance in the case, then
7 we believe it can't be so narrowly cabined; but that's an
8 argument, I think, for another moment.

9 But, for now, since the document is not being introduced
10 into evidence and I'm trying, in the context of a bench trial,
11 not to be obstreperous, I just want to make sure we understand
12 that our not popping up every time for something like this is
13 without prejudice to our later opposing the introduction of the
14 exhibit.

15 THE COURT: Right. And, at this point, it's not being
16 offered. So, that's all fine.

17 You may continue.

18 MR. C. COOPER: Thank you, Your Honor.

19 BY MR. C. COOPER:

20 Q. Mr. Alcalde, this e-mail is addressed to John Kennedy.
21 Who is John Kennedy?

22 A. He was a partner of mine at Crabbe Brown.

23 Q. And it's addressed to D. Richards. Who is D. Richards?

24 A. David Richards.

25 Q. In this e-mail, there is a reference to the PG. What

1 does that refer to?

2 A. The Attorney General of Venezuela.

3 Q. And why is it "PG"?

4 A. That's -- That would have been using the Spanish.

5 Q. And which stands for what?

6 A. Procuradura General.

7 Q. In the -- In this e-mail, there is a reference to
8 wanting you to read the law first. What does that refer to?

9 A. He wanted me to read the organic law of the Attorney
10 General.

11 Q. Were you able to do that?

12 A. Yes.

13 Q. How did you obtain a copy of it?

14 A. He sent me a copy.

15 MR. C. COOPER: Could we show the witness Exhibit 121
16 in the same binder?

17 BY MR. C. COOPER:

18 Q. Mr. Alcalde, you've been handed Plaintiff's Exhibit 121.
19 Could you identify that, please?

20 A. This is an e-mail that I received on or about February
21 14, 2004, with the address for Miguel Jacir. And embedded in
22 the e-mail is the text for the organic law of the Attorney
23 General of Venezuela.

24 Q. When you received e-mails such as this related to
25 Bandagro, did you retain them as part of the file?

1 A. Well, I am assuming that this e-mail was retained.

2 Q. Was it your practice to retain the e-mails that you
3 either sent or received related to the Bandagro matter?

4 A. It was my practice to retain e-mails that were what I
5 thought material.

6 Q. In general terms, what is the text -- You don't need to
7 read it, but what is set forth in this Exhibit 121?

8 A. The text of the -- Well, it starts out with what we can
9 call the legislative intent of the law, exposicion de
10 motivos -- e-x-p-o-s-i-c-i-o-n -- new word d-e -- motivos,
11 m-o-t-i-v-o-s -- which is akin to the legislative intent. And
12 then we go into the actual articles of the law.

13 MR. C. COOPER: Could we have the witness be given
14 Exhibit 7 from Binder 3?

15 BY MR. C. COOPER:

16 Q. Mr. Alcalde, do you have Exhibit 7, Plaintiff's Exhibit
17 7?

18 A. Yes.

19 Q. All right. It might be a little easier -- What is
20 Plaintiff's Exhibit 7?

21 A. Exhibit 121 was the text of the law -- I'm sorry -- was
22 the text of the law in Spanish.

23 And Exhibit 7 appears to be an English translation of
24 the organic law of the Attorney General and, I should add, the
25 organic law at the time of the issuance of the opinion of the

1 Attorney General of October 2003.

2 Q. Did that subsequently change?

3 A. I don't know. But, since I'm not sure, I thought I'd
4 make that clear.

5 THE COURT: What's the date of this?

6 THE WITNESS: December -- Well, let's see -- 2001 is
7 the presidential decree here. It looks like it was signed and
8 published in the *Official Gazette of Venezuela* on the 13th of
9 December 2000.

10 THE COURT: All right. Thank you.

11 And, Mr. Cooper, is it your position this would have
12 been in effect in 2003-2004?

13 MR. C. COOPER: It is, Your Honor. I don't believe
14 there is any dispute.

15 THE COURT: All right.

16 BY MR. C. COOPER:

17 Q. Mr. Alcalde, what is the significance, if any, of this
18 information, the legislative history, if you will, and the
19 organic law of the Attorney General, to your task of assessing
20 the Attorney General opinion?

21 A. Well, I was -- I was informed by Dr. Jacir that the
22 opinion of the Attorney General of October 3, 2003, was final
23 and binding against the Republic of Venezuela. And, so, I
24 wanted to get a better understanding of that, obviously, by
25 doing several things.

1 Number one, since I speak Spanish, I wanted to read the
2 actual text of the statutes myself and understand them. And I
3 also wanted to hire the best experts in Venezuela that I could
4 find to shed light on what Dr. Jacir was telling me with
5 respect to the finality of the Attorney General's opinion.

6 And as I -- you know. This was an evolution on my part.
7 The more I learned, the more I wanted to learn about it. And
8 so I wanted to understand the process, and I even looked
9 at -- I got a copy of the constitution of Venezuela. I got a
10 copy of administrative procedure statutes. And I engaged in
11 discussions with, at least in my opinion, preeminent experts on
12 the law in Venezuela.

13 Q. Let's focus for a moment on the exhibit before you,
14 Exhibit 7. What, if anything, did you learn about the organic
15 law of the Attorney General's Office as you undertook to
16 educate yourself about it?

17 A. Sure. I learned that, in 1999, a new constitution had
18 been enacted in Venezuela with the takeover of the Government
19 by El Partido Bolivariano, the Bolivarian Party, and with Hugo
20 Chavez becoming President.

21 After the new constitution was enacted, this specific
22 law -- There could have been other laws, but I was focusing on
23 this specific law. This specific law was enacted, as it stated
24 in the legislative intent, to bring the Attorney General within
25 the framework of the new constitutional order and to, in

1 essence, empower the Attorney General of Venezuela as the sole
2 and principal attorney representing the State of Venezuela in
3 looking out for the interests of the patrimony of the State.

4 And it was -- it was important and, you know, it was set
5 forth in the legislative intent that that was the role of the
6 Attorney General.

7 In addition to that, the law created, what it says in
8 the legislative intent, an administrative procedure for claims
9 against the Republic of Venezuela, and also says in the
10 legislative intent to raise the relevancy of the role of the
11 Attorney General with respect to deciding the legality of
12 claims against the State and to also serve as a check on the
13 activities of other ministers when the patrimony of Venezuela
14 was at stake.

15 And, so, the significance to me was, number one, that
16 this was a new law; that the legislative -- that the General
17 Assembly was pretty clear in the intent and role for the
18 Attorney General, this new role for the Attorney General; and
19 then, of course, there was the articles that dealt with what
20 happens when there's a claim against the State of Venezuela and
21 the role of the Attorney General with respect to those claims.

22 So, the significance to me was that, as I was speaking
23 to Dr. Jacir, as I was talking to experts in Venezuela about
24 this law, you know, I was reading the text of these laws
25 myself; and I was able to ask questions about the text of these

1 laws to the attorneys and, you know, pose hypotheticals and,
2 you know, what if this and what if that, those sort of things.

3 Q. You mentioned looking at articles or provisions of the
4 new organic law itself. Could you turn to, in Exhibit 7, to
5 the page that's Bates stamped SKYE57, SKYE00057, please?

6 A. Yes.

7 Am I going to need some of these exhibits? It's getting
8 a little crowded over here.

9 COURTROOM DEPUTY CLERK: You can just put them down.

10 THE WITNESS: I want to make sure they don't all fall
11 at some point.

12 COURTROOM DEPUTY CLERK: That's fine.

13 THE COURT: I don't want to say I told you so, but I
14 warned you about multiple binders with witnesses on Friday.
15 But go ahead.

16 MR. C. COOPER: And, Your Honor, I think we'll rectify
17 that on a break.

18 THE COURT: Very good.

19 BY MR. C. COOPER:

20 Q. Mr. Alcalde, looking at the page within Exhibit 7 marked
21 "Skye 57," could you tell us the significance, if any, of the
22 text on this page?

23 A. Yes. So, I read this text.

24 MR. SCHWARTZ: Excuse me for a second.

25 I'm going to have to object to that question, Your

1 Honor, to the extent it's calling for Mr. Alcalde, who's not a
2 Venezuelan lawyer or a legal scholar, to be opining on the
3 significance of Venezuelan statutory provisions.

4 If the understanding of the question is what did he take
5 this to mean in the course of the assessment he was doing,
6 that's fine. But the question is posed as though it's
7 addressed to an expert.

8 THE COURT: Yeah. And I think there is a nuance
9 there.

10 I think you would agree with that, Mr. Cooper?

11 MR. C. COOPER: I agree, Your Honor.

12 THE COURT: You'll each have experts on this issue,
13 anyway.

14 MR. C. COOPER: Sure.

15 THE COURT: So I'll listen to -- You can go ahead and
16 finish the answer.

17 MR. SCHWARTZ: And, again, I'm not going to keep
18 standing up every this time happens. Okay?

19 THE COURT: Right.

20 MR. C. COOPER: We're not trying to qualify Mr.
21 Alcalde as an expert on Venezuelan law.

22 THE COURT: Yes. I understood.

23 You may answer.

24 THE WITNESS: Could you repeat the question?

25 BY MR. C. COOPER:

1 Q. As you were assessing the laws in an effort to
2 understand the impact of the Attorney General opinion, what
3 significance, if any, did the text on this page have in that
4 process?

5 A. Well, the significance to me was that, you know, I read
6 the relevant portions of the organic law of the Attorney
7 General with respect to the process of what happens when a
8 claim is filed with a minister that allegedly owes a debt; that
9 that minister is supposed to, in essence, you know, conduct an
10 investigation, then submit that investigation, duly documented,
11 to the Attorney General for the Attorney General to decide
12 whether the claim is under Venezuelan law procedente or not
13 procedente -- p-r-o-c-e-d-e-n-t-e, procedente -- which my
14 interpretation of "procedente" means whether it was a lawful
15 claim or not.

16 And, so, the significance to me was that, when that --
17 that -- I was reading, firsthand, the text that indicated that
18 the -- well, and then the text went on to say that the opinion
19 of the Attorney General was in this -- in the English
20 translation, it says has a binding effect. In Spanish, the
21 word is "vinculante" -- v-i-n-c-u-l-a-n-t-e -- meaning that
22 it's final and binding.

23 Q. And where within the articles do we see -- well, at
24 least where do we see the English?

25 A. Article 56. And, in this particular translation,

1 it's -- This translation says, her legal opinion -- If we look
2 in Article 56, the next-to-the-last sentence, it said: "her
3 legal opinion concerning the admissibility of the claim."

4 I dispute that translation. I dispute that the word
5 "procedente" means admissible. The word "procedente" means
6 lawful, in the right, not admissible.

7 Q. And, when you say "procedente," we have been looking at
8 the English translation on SKYE57. Within the same exhibit, in
9 the second half of it, there's the Bates number Skye 57. Could
10 you point to us, in the Spanish version, where we would find
11 "procedente"?

12 A. Which exhibit?

13 Q. Same exhibit.

14 A. Oh! The Spanish is behind? Okay.

15 So, if we go to -- if you go to Skye 57 and we look at
16 Article 56 in the Spanish, the third sentence from the -- We
17 can see the word "vinculante" closing the last sentence, but
18 the sentence above reads: "Su opinion juridica respecto a la
19 procedencia o no de la reclamacion."

20 Let me spell that for you.

21 First word is s-u. Then opinion, o-p-i-n-i-o-n. The
22 next word is j-u-r-i-d-i-c-a. The next word is
23 r-e-s-p-e-c-t-o. The letter a. The next word is l-a.
24 Procedencia is p-r-o-c-e-d-e-n-c-i-a. The letter o, a new
25 word. Then the word n-o. D-e. New word l-a. New word

1 r-e-c-l-a-m-a-c-i-o-n.

2 Q. Mr. Alcalde, you've said --

3 MR. SCHWARTZ: Excuse me for a second, Your Honor.

4 THE COURT: My first question -- then I want to hear
5 from you -- is do we have a translation dispute here, because
6 if we do, we've talked about how we're going to resolve that?

7 MR. SCHWARTZ: The parties don't have a dispute.

8 THE COURT: All right.

9 MR. SCHWARTZ: It appears that the Plaintiff has a
10 dispute with Mr. Alcalde.

11 This is a Plaintiff's Exhibit.

12 THE COURT: Is the word in question with Mr. Alcalde
13 going to have some legal significance as we go forward?

14 MR. C. COOPER: I believe it is, Your Honor.

15 THE COURT: All right. And, then, you know, I'd
16 mentioned to you I'm not fluent in Spanish. I'm not the person
17 to resolve this.

18 Do we need to go to the third party, agreed upon, to
19 make the translation final decision?

20 MR. C. COOPER: We may. What I'm simply asking Mr.
21 Alcalde is, as he read this, what was his understanding of that
22 phrase.

23 THE COURT: All right. And you had another matter,
24 Mr. Schwartz.

25 MR. SCHWARTZ: I have this matter: I'm going to

1 object to the testimony and move to strike it.

2 This is the Plaintiff's exhibit and the Plaintiff's
3 exhibit translation. The case has been going on since 2004. I
4 haven't been with the case since 2004; but, to the best of my
5 knowledge --

6 THE COURT: Well, let me ask you directly, when did
7 you first become aware of this translation issue? Was it just
8 now?

9 MR. SCHWARTZ: Yes.

10 THE COURT: All right.

11 MR. C. COOPER: Well, I don't know that that's true,
12 Your Honor.

13 MR. SCHWARTZ: I'm speaking for myself. I tell you
14 I'm blind-sided that Mr. Alcalde is taking issue with the
15 translation that the Plaintiff has --

16 THE COURT: All right. It's a one-word issue.

17 Is that right? Is that what you said, Mr. Alcalde?

18 THE WITNESS: Well, Your Honor, I've always taken
19 issue with that word, even when I was litigating the case.
20 I've always taken issue with it.

21 THE COURT: You're a witness now.

22 Lawyers as witnesses, always an issue. But here is my
23 question: There is a word -- Is it a single word that's in
24 dispute, or is it a phrase?

25 THE WITNESS: It's an important word.

1 THE COURT: But one word?

2 THE WITNESS: One word, yes.

3 THE COURT: Let's just write this down. What's the
4 word?

5 THE WITNESS: Procedencia, p-r-o-c-e-d-e-n-c-i-a.

6 THE COURT: All right. And just so I'm clear, your
7 understanding of that word would be --

8 THE WITNESS: That it's lawful, in accordance with
9 law, not -- The term that was used in the translation is
10 "admissible."

11 I can elaborate why I dispute it.

12 THE COURT: No. In other words, it's in accordance
13 with law, versus admissible in law?

14 THE WITNESS: Yes, sir. Yes, sir.

15 THE COURT: And do you both see some legal consequence
16 as to which of the two is accepted?

17 MR. SCHWARTZ: Potentially, although I would add that
18 we just can't focus on one word in the context of a clause like
19 this. It needs to be read in context. But, from our
20 standpoint, the larger issue is that the parties have been
21 working with the one translation forever.

22 THE COURT: And that's the other one: The admissible
23 in law?

24 MR. SCHWARTZ: Yeah.

25 THE COURT: That's what you're assuming?

1 MR. SCHWARTZ: I'm reading from the Plaintiff's
2 exhibit. This is the version that's been in circulation. The
3 Plaintiff has never taken issue with its own translation of its
4 own exhibit. And I think it's very late in the day to attempt
5 to do that by having Mr. Alcalde as some type of translation --

6 THE COURT: There are one of two ways this could
7 happen. Obviously, we'd want the witness to be scrupulously
8 truthful as he goes through this. And if he disagrees with an
9 interpretation, he should say so, but that doesn't mean that
10 you have disputed what has been originally agreed upon.

11 Where are we with that, Mr. Cooper?

12 MR. C. COOPER: Your Honor, our position has been
13 throughout this case, I believe, as Mr. Alcalde indicated, even
14 before we were involved, there was a dispute over that word.
15 In order to get past those disputes during the pleading
16 stage -- This wasn't our translation -- we adopted Venezuela's,
17 or just simply used, their translation, but recognized that
18 that word, to the extent it is a significant difference -- and
19 I'm not convinced that it is, but --

20 THE COURT: Do we know at this -- I can't see -- I
21 don't know what else is coming from your experts, so I don't
22 want to be presumptuous, but these two are not irreconcilable
23 terms, it wouldn't seem to me.

24 MR. SCHWARTZ: Well, they may be because Mr. Alcalde
25 is trying to add another dimension to binding by adding the

1 word "final," and it may have potential significance.

2 THE COURT: That's why we went through this. What I'd
3 written down doesn't include the word "final." That's one of
4 the key issues here, it would seem to me. But neither one of
5 these interpretations address that issue, do they?

6 MR. SCHWARTZ: Well, I heard Mr. Alcalde say he was
7 taking issue with the translation to that extent. But my point
8 is substantive, but also procedural.

9 You asked us to iron these types of issues out.

10 THE COURT: That part, I understand.

11 MR. SCHWARTZ: We ironed. And here we are with this
12 Plaintiff's exhibit.

13 THE COURT: I told you my intention will be -- You've
14 agreed on it, first and fortunately, but any interpretation
15 issue is going to be sent to someone with special knowledge in
16 Spanish. And we can do that quickly, I understand. But I
17 would just caution you there has to be some reason. If it's
18 just a phrase that when you put these side by side they have no
19 legal consequence, then we're spinning wheels.

20 MR. SCHWARTZ: Correct. This one may have, but I
21 don't view this as a translation dispute in the sense that
22 you've contemplated there may be any. This is a situation
23 where there was no dispute until a moment ago.

24 THE COURT: I understand. Well, unless you can
25 persuade me that there is some legal effect to this -- if there

1 is, then we need the third party involved. But at this point
2 you're willing to indicate you're not sure? Would that be the
3 best way to put it?

4 MR. SCHWARTZ: I think the Plaintiff has to live with
5 its own exhibit. That's our stance. I'm telling you there is
6 not a dispute that needs being outsourced to the translation
7 czar.

8 I don't think Mr. Alcalde should be permitted to testify
9 as the faux translation --

10 THE COURT: Well, if there is a dispute, I've already
11 said I'm not going to resolve an interpretation dispute. I
12 guess the question to you, Mr. Cooper, is do we need to
13 activate our dispute resolution as far as language?

14 MR. C. COOPER: I mean, I don't know that we do, but
15 we can certainly consult and let the Court know. It can be
16 done very quickly if we do need to.

17 THE COURT: I'll note, at this point, we have sort of
18 a dissident unresolved chord, so to speak.

19 So, with that, you may continue.

20 MR. C. COOPER: Thank you.

21 BY MR. C. COOPER:

22 Q. So, Mr. Alcalde, as you read the statute -- What I'm
23 seeking is your understanding of it as you began to form
24 impressions about the law and how it interacted with the
25 Attorney General's opinion.

1 A. Well, my impression of it is that the opinion of the
2 Attorney General was issued in accordance with the organic law
3 of Venezuela from what I was reading and learning -- from the
4 organic law of the Attorney General. I'm sorry.

5 MR. C. COOPER: And so the record is clear and in
6 response to one of the Court's questions, if we could hand the
7 witness Exhibit 8, please, which I believe is a joint exhibit.

8 Is it 15 or 16? This is in Binder 3.

9 BY MR. C. COOPER:

10 Q. Mr. Alcalde, do you have Exhibit 8 in front of you?

11 A. I do.

12 Q. All right. And does that indicate the date, the
13 effective date, of the Attorney General -- the organic law of
14 the Attorney General that we've been discussing?

15 A. It has a date of November 13, 2001, at the top.

16 Q. You've indicated that, in the course of trying to get an
17 understanding of Venezuelan law, you also reviewed other
18 sources of law, other statutes. Did I understand you
19 correctly?

20 A. Yes.

21 Q. All right. In Binder 4 --

22 MR. C. COOPER: Could we have the exhibit -- the
23 witness be handed Exhibits 31, 32 and 33, please?

24 COURTROOM DEPUTY CLERK: Binder 4?

25 MR. C. COOPER: Binder 4. And it's 31, 32 and 33.

1 BY MR. C. COOPER:

2 Q. Mr. Alcalde, do you have Exhibit 31 in front of you?

3 A. I do.

4 Q. What is Plaintiff's Exhibit 31?

5 A. It is the Spanish copy of the Constitution of Venezuela
6 of 1999.

7 Q. At the bottom, there is a footer, kind of a print line
8 there. Do you see the date to the right: 5-6, 2004?

9 A. Yes.

10 Q. What, if anything, does that indicate?

11 A. Most likely, the day that I may have printed this off.

12 Q. Did you review the Venezuelan Constitution, the 1999
13 Constitution, as part of your efforts to get an understanding
14 of the impact of the Attorney General opinion?

15 A. Yeah. I reviewed -- I didn't review all of the
16 Constitution, but I reviewed the parts that dealt with the
17 Attorney General, which start on Article 247 and go through
18 250. I reviewed a little bit about how the Council of
19 Ministers was set up in Venezuela. I may have looked at a
20 couple other sections, but I mostly focused on the
21 constitutional basis and foundation for the Office of Attorney
22 General.

23 Q. If you could turn to Exhibit 32, please.

24 A. (Witness complies.)

25 Q. What is Exhibit -- Can you identify Exhibit 32 for us,

1 please?

2 A. It is the Organic Law of the Supreme Court of Venezuela
3 in Spanish.

4 Q. Did you review this document during your efforts to --

5 A. I printed it out. I'm not sure that I spent a whole lot
6 of time on it, but I printed out -- I must have had some
7 interest in it at the time.

8 Q. If you could turn to Exhibit 33, please.

9 A. Exhibit 33 is the Organic Law of Public Administration.
10 It, again, has a printout date of June 24, 2004. I was
11 interested in getting some background on administrative
12 procedures in Venezuela.

13 Q. Exhibits 31, 32 and 33, why did you review these
14 different laws?

15 A. Well, I mean, obviously, I wanted to understand -- When
16 I -- When I read the legislative intent for the Organic Law of
17 the Attorney General, the legislative intent cited to the
18 Constitution and the Constitutional sort of role of the
19 Attorney General of Venezuela. So, I was interested in going
20 back and actually seeing what the Constitution of Venezuela of
21 1999 said about the role of the Attorney General.

22 My review of the administrative procedure law and the
23 organic law was because I was interviewing and talking to some
24 lawyers when I had been -- In June, I had been back to Caracas,
25 and I had met with some lawyers that were experts in

1 administrative law and administrative procedure in Caracas.

2 And I had engaged in conversations with them as I was trying to
3 identify experts about the opinion of the Attorney General.

4 And, so, I was talking to lawyers who were experts in these
5 various fields. And I don't know -- I kind of wanted to know
6 more about what they did and what the laws of Venezuela were
7 about.

8 Q. During this time in 2004 when you were reviewing the law
9 pertaining to the Venezuelan Attorney General, did you attempt
10 to gather any information about Bandagro?

11 A. Yes.

12 Q. How did you go about trying to get information on
13 Bandagro?

14 A. Well, you know, it's, you know, hard to believe; but, in
15 2016 -- 2016, Googling or searching on the Internet is not the
16 same as 2004, although, you know, we kind of tend to forget.
17 But, so, I was searching the Internet for newspapers in
18 Venezuela that were perhaps publishing stories about Bandagro.

19 At that time, I was at Crabbe Brown. I was in charge of
20 our electronic legal research contract. And, you know, I met
21 with Lexis and Westlaw representatives and pushed to contract
22 for databases, let's say, that, you know, might have -- that
23 might carry publications in Spanish, the *Wall Street Journal*,
24 also, and those sort of things. And, so, I was doing what I
25 could to, you know, do a lot of Internet research to try to get

1 stories about Bandagro and what was going on with it in
2 Venezuela.

3 MR. C. COOPER: Could I ask that the witness be given
4 Plaintiff's Exhibit 74, which is in Binder 5?

5 COURTROOM DEPUTY CLERK: 74.

6 BY MR. C. COOPER:

7 Q. Mr. Alcalde, I'll have you first flip through
8 Plaintiff's Exhibit 74 and ask if you recognize the documents
9 in Exhibit 74.

10 A. Well, there are several documents here, but the first
11 document is an article of June 29, 1981, with respect to a bank
12 in Florida that had been involved in some Bandagro notes, ICC
13 notes.

14 Q. When did you obtain this?

15 A. I would have obtained that during the period of time
16 that I was investigating Bandagro and, you know, learning about
17 everything I could about Bandagro and the history of Bandagro.
18 So I wasn't only trying to learn about the law of Venezuela, I
19 was also trying to learn what I could about the history of the
20 Bandagro Bank in Venezuela.

21 I had received from Dr. Jacir -- He and I had spoken
22 about the history of that bank. I think he sent me an article
23 that dealt with the banking situation in Venezuela in the early
24 '80s. And, so, I was also trying to learn about -- what I
25 could about the history of the Bandagro Bank, and also about,

1 just in general, Venezuela's management of its state banks and
2 Venezuela's management of its external debt. So these --

3 Q. I'm sorry. In this first article, what significance, if
4 any, did this have to your efforts to get an understanding of
5 Bandagro?

6 A. The significance here is on page 2 of this article, the
7 second full paragraph -- This article dealt with a merger of
8 two banks. And the merger -- the date of the merger, according
9 to this article, was being held up over a dispute with Bandagro
10 with respect to the mismanagement or the misplacement of some
11 promissory notes of Bandagro in the amount of \$500 million.

12 So, the significance of this article, to me, was that,
13 obviously, my task was to investigate the finality of the
14 Attorney General's opinion with respect to a billion dollars in
15 notes that were issued by the Bandagro Bank. So, the
16 significance of when I found this article was -- to me was, oh,
17 okay, look, you know, here's a reported incident of the
18 Bandagro Bank involving notes in the amount of a significant
19 amount, \$500 million.

20 MR. SCHWARTZ: Excuse me a second.

21 Just for the record, Your Honor, I'm going to move to
22 strike the answer to the extent it is intended for any purpose
23 having to do with the truth of the various assertions in this
24 document. If it's, again, information that was in Mr.
25 Alcalde's head, that's the sole purpose, we understand.

1 THE COURT: I understand that's the sole purpose.
2 Isn't it?

3 MR. C. COOPER: Agreed, Your Honor.

4 THE COURT: So, the objection is well taken. But I
5 assume the answers will be given on that basis.

6 BY MR. C. COOPER:

7 Q. Mr. Alcalde, what was the date of that article that you
8 just referred to?

9 A. The date of the article is June 29, 1981.

10 Q. If you can remind the Court, what is the date on the
11 promissory notes that you identified at the outset of this case
12 as Exhibits 1 and 2?

13 A. They were taken away. I don't want to guess.

14 MR. SCHWARTZ: I think we can stipulate to what's on
15 those documents, Your Honor. It's not an issue in dispute as
16 to what it says.

17 THE COURT: Any objection to using the stipulation --

18 MR. C. COOPER: No, Your Honor. We'll stipulate that
19 the date of the notes is December 7th, 1981.

20 MR. SCHWARTZ: That's what it says on the face of it.
21 Yes.

22 THE COURT: All right. Very good.

23 THE WITNESS: Very good.

24 BY MR. C. COOPER:

25 Q. All right. Mr. Alcalde, if you could turn to the next

1 article, Exhibit 74. Do you recall -- do you recognize this
2 article?

3 A. Yes.

4 Q. Do you recall when you first saw it?

5 A. Yes. When I was investigating, as I said, the -- well,
6 the task that I'd been given with respect to Bandagro and the
7 notes -- Can I just refer to that as the Bandagro matter so --

8 Q. (Nodding affirmatively.)

9 A. When I was investigating the Bandagro matter, obviously,
10 one of the issues was whether or not Venezuela had assumed the
11 obligations of Bandagro. It was, obviously, a prominent issue
12 in the opinion of the Attorney General. And, so, this was an
13 article that, again, in my head, backed that up.

14 MR. SCHWARTZ: The same objection and limitation,
15 please, Your Honor.

16 THE COURT: The same issue we just talked about?

17 MR. SCHWARTZ: Yes.

18 THE COURT: All right. That will be a continuing
19 objection, but the ruling is the same.

20 MR. SCHWARTZ: Thank you.

21 THE COURT: This is as far as -- This is not the truth
22 of the matter, is the long and the short.

23 MR. SCHWARTZ: Okay. It's okay if I don't keep
24 standing up to say the same thing?

25 THE COURT: (Nodding affirmatively.)

1 MR. SCHWARTZ: Thank you.

2 MR. C. COOPER: Your Honor, for this article and the
3 next one, which is a similar version of it, the Plaintiff wants
4 to reserve the right to argue about using it for the truth of
5 it as an ancient document and periodical.

6 THE COURT: Why don't we save that as we get towards
7 the end and we'll deal with admissions of exhibits.

8 MR. C. COOPER: Thank you.

9 BY MR. C. COOPER:

10 Q. So, Mr. Alcalde, what, if anything, was significant
11 about this article to you as you were considering the Bandagro
12 matter?

13 A. What was significant to me about this was that, besides
14 the assumption of the obligations, just like in the last one,
15 that foreign banks were being informed that Venezuela was
16 assuming the responsibility for the credit obligations of the
17 Bandagro Bank. But significant to me was that this was just
18 like the last article. I mean, it's being reported in the
19 major financial newspaper of the United States.

20 THE COURT: Well, let's back up for a moment.

21 One of the triable issues when I was looking through
22 your final pretrial order, is whether -- Let's make all sorts
23 of assumptions here for the sake of argument. One thing that
24 has to be established is that the bank notes were assumed by
25 the Government. Do you still see that as a triable issue?

1 MR. SCHWARTZ: Absolutely.

2 THE COURT: All right.

3 MR. SCHWARTZ: The way I'd phrase it is whether the
4 purported guarantee embedded in the purported notes is valid,
5 but my answer is, substantially, yes, that's certainly a
6 triable issue.

7 THE COURT: Well, then, we probably need to address
8 the merits of this as far as an exception to the hearsay rule.

9 So, your position, Mr. Cooper?

10 MR. C. COOPER: Your Honor, our position would be
11 that, for two reasons, this is excepted from the hearsay rule.
12 As the Court will see on the documents themselves, this is from
13 1981. It's from the *Wall Street Journal*, a respected
14 publication. *The Wall Street Journal* is reporting on matters
15 that it typically reported on, such as the financial affairs of
16 various governments.

17 THE COURT: So, you're arguing this is -- I hesitate
18 to call something 20 years or older an ancient document, but
19 that's what the rules say. And this is well beyond that.

20 MR. C. COOPER: It is. It's 803.16.

21 THE COURT: Yes, 803, Subpart 16. The issue there is
22 whether or not the authenticity is established. And the
23 representation is this came from a printout from the LexisNexis
24 that indicates this is an article in the *Wall Street Journal*.

25 So, Mr. Schwartz, where does that take us?

1 MR. SCHWARTZ: I have no objection to the authenticity
2 of the document. However, it is hearsay within hearsay.

3 If you take a look at this, first of all, we don't know
4 who the reporter is. So, you've got a reporter talking about
5 the Venezuelan Government having informed foreign banks,
6 something, a generalization. Then there is a reference to the
7 announcement.

8 Evidently, this is a reference to some announcement in
9 the second paragraph, which, although it's -- no one would know
10 for sure, it appears to be, or could be, some other writing.
11 You don't have the announcement before you. And to add another
12 layer of hearsay within hearsay within hearsay, then you have,
13 sources close to Bandagro. Who are they? There's no
14 indication there that those are people who are authorized
15 representatives of the Venezuelan Government speaking within
16 the scope of their responsibility.

17 So, you have layer upon layer upon layer of hearsay in
18 the document.

19 THE COURT: Well, we view that a bit differently. I
20 think there's nothing internal that indicates another declarant
21 is speaking. But the point is -- Let me ask Mr. Cooper, do you
22 have other evidence regarding the alleged assumption of the
23 obligations by the Government of Venezuela?

24 MR. C. COOPER: We will present a letter, later on in
25 the testimony, that they deny the authenticity of.

1 THE COURT: You deny the authenticity of the letter,
2 as well as the notes?

3 MR. SCHWARTZ: On both, sir.

4 THE COURT: All right. I think this is the classic
5 fit of evidence for 803.16. I don't see any question. There
6 could still be some. I'll give you that opportunity; but there
7 is no question, at this point, of the authenticity of the
8 document. So, as a preliminary matter, I'm going to rule it is
9 admissible, substantive evidence.

10 BY MR. C. COOPER:

11 Q. Mr. Alcalde, the article that you just referred to makes
12 reference to, in the second paragraph, to an intervention. At
13 the time you obtained this article, were you aware of any
14 intervention by the Government in the Bank?

15 A. Yes. The Government had intervened on behalf of the
16 Bandagro Bank. I don't think that that's disputable. It's in
17 the history of the AG opinion and the Ministry of Finance
18 investigation. And Waldemar Cordero, it's my understanding,
19 who had been a prior officer of the bank, was appointed the
20 intervenor, or the trustee, of the bank.

21 Q. If we could turn to the next page within this Exhibit
22 74, could you identify this document, please?

23 A. Again, it's a document that I would have obtained while
24 I was doing my investigation of the Bandagro matter.

25 Q. Looks like the same as the previous document, but in a

1 different format?

2 A. Yes.

3 Q. As you read the article and you look at the third
4 paragraph, by the time you read this article, had you received
5 any information about what's referred to there as the foreign
6 debt obligations of Bandagro?

7 A. Well, that was an issue that was addressed in the
8 opinion of the Attorney General. So, that's the information
9 that I would have had. So, part of what I was doing was
10 looking for information that was either in line with what the
11 Attorney General had said or not said.

12 Q. If you could turn to the next document within Exhibit
13 74, please, do you recognize this document?

14 A. Yes.

15 Q. What is this?

16 A. A document that I would have obtained during my
17 investigation of Bandagro.

18 Q. Did this have any significance to your investigation?

19 A. Well, the only significance that it had was with respect
20 to, you know -- I forgot to mention that -- you know, you
21 didn't ask me. But as a child I lived in Venezuela. I
22 actually lived in Venezuela from 1957 to 1960. My brother was
23 born in Venezuela. And we went back to Cuba, to Havana, from
24 Caracas, after Fidel Castro won the revolution. And, so, I had
25 always, you know, had an interest in Venezuela, as well, and

1 always had, let's say, opinions about Venezuelan's management
2 of its economy and its banks. And, you know, we read a lot
3 about the issues that are happening in Venezuela today, but
4 those issues are not necessarily new to Venezuela.

5 I had discussions, you know, as a child, with my father
6 about the issues in Venezuela. And then when I became involved
7 in Bandagro and started, you know, studying what was happening
8 in the '70s and '80s with banks in Venezuela, this article was
9 not -- you know, was sort of in line with those -- with my
10 general understanding and learnings about Venezuela.

11 Q. By the time you obtained this article, had you read the
12 Attorney General's opinion?

13 A. Yes.

14 Q. Was the content of this article in line with, or
15 contrary to, what you were reading in the Attorney General's
16 opinion?

17 MR. SCHWARTZ: Objection.

18 THE COURT: Overruled.

19 You may answer.

20 THE WITNESS: Well, it was in alignment with it.

21 BY MR. C. COOPER:

22 Q. In what way?

23 A. That there was a discussion in the Attorney General's
24 opinion about -- and also in the Ministry of Finance
25 investigation -- about disputes, for example, with respect to

1 documents that would have been of a public nature; that there
2 were some documents that couldn't be found; that there were
3 disputes about whether people had signed certain documents,
4 yet, despite those disputes, there were other documents that
5 were found in public notaries and which carried some sort of
6 official weight, under Venezuelan law, that those documents
7 were there; that -- you know, for lack of a better word, issues
8 of mismanagement.

9 And, when I combined that, for example, with my
10 understanding of what happened with the Atlantic Bank in
11 Florida and the fact that there were Bandagro notes involved in
12 that matter, all of these issues, I was not surprised.

13 Q. Could you turn to the next article in this exhibit, in
14 Exhibit 74?

15 A. (Witness complies.)

16 Q. Do you recognize this article?

17 A. Yes.

18 Q. When did you first see this article?

19 A. When I was investigating the Bandagro matter.

20 Q. Did this article have any significance to your
21 investigation?

22 A. Well, the significance to me was, you know, obviously,
23 this article deals with a delay on making payments on notes
24 that were owed by Venezuela and an extension or rolling over by
25 the Government entities with respect to these bonds.

1 Q. What was the source of this article? What periodical
2 did you obtain this from?

3 A. Looks like the *Wall Street Journal*.

4 Q. The first paragraph indicates, mentions, Venezuela
5 unilaterally postponing payments on nearly \$1 billion in
6 Republic of Venezuela bonds.

7 By the time you read this article, had you received any
8 information about Venezuela taking unilateral action to
9 postpone payments on a significant dollar value of bonds?

10 A. With respect to the Bandagro notes, yes. That was also
11 discussed in the opinion of the Attorney General.

12 Q. Could you turn to the last article in this exhibit, in
13 Exhibit 74?

14 A. (Witness complies.)

15 Q. Do you recognize this?

16 A. Yes. Again, it was an article that I would have
17 obtained when I was investigating the Bandagro matter. And the
18 significance of this article from the Financial Times, dated
19 February 22, 1982, was that it was being reported in this
20 article that, the week prior to this, the Bandagro Bank had a
21 new mandate for 200 million -- I'm guessing dollars here -- 200
22 million.

23 So, the significance to me was that these sums of money
24 were being reported with respect to the Bandagro Bank during
25 the relevant time period of the Bandagro notes at issue in this

1 case.

2 MR. C. COOPER: Your Honor, we could segue into a
3 different topic.

4 THE COURT: This may be a good time for our morning
5 recess.

6 We'll be in recess for 15 minutes.

7 (A recess was taken at 10:22 a.m. until 10:37 a.m.)

8 THE COURT: Mr. Cooper, you may continue.

9 MR. C. COOPER: Thank you, Your Honor.

10 BY MR. C. COOPER:

11 Q. Mr. Alcalde, you testified that you spoke with a Miguel
12 Jacir on various occasions. Did you share with anyone what, if
13 anything, you learned from Mr. Jacir?

14 A. Well, I shared all material knowledge that I was gaining
15 with David Richards.

16 Q. If we could turn to Exhibit 79 in binder 6, please.

17 THE COURTROOM DEPUTY: Plaintiff's Exhibit 79.

18 BY MR. C. COOPER:

19 Q. Mr. Alcalde, do you have Exhibit 79?

20 A. I do.

21 Q. Do you recognize it?

22 A. Yes.

23 Q. What is Exhibit 79?

24 A. It's an e-mail I sent to David Richards on or about
25 February 22nd, 2004.

1 Q. Why did you send this e-mail to Mr. Richards?

2 A. Well, Mr. Richards had entasked me with the
3 investigation of the Bandagro matter. I was keeping him
4 advised of what I was learning.

5 Q. At this point, in February of 2004, had you formed any
6 final opinions about the legal effect, if any, of the Attorney
7 General's October 2003 opinion?

8 A. No.

9 Q. This e-mail indicates that you had spoken with
10 Mr. Jacir. Did you ever meet with Mr. Jacir?

11 A. Yes.

12 Q. How many times?

13 A. Well, I think I met with Dr. Jacir three times before
14 the notes were purchased by Skye Ventures and before the
15 lawsuit was filed. And I think I met with him on other
16 occasions after the litigation was filed; that I met with him,
17 I believe, in April of 2004 in Caracas, I met with him I think
18 in June of 2004 in Caracas and I think there was another time
19 that I met -- he had a condominium just north of Miami in
20 Florida and I met with him and his wife there, as I recall.

21 Q. So Exhibit 79 is an e-mail dated -- we saw dated
22 February 22nd, 2004. Had you met with Mr. Jacir by that point?

23 A. No. I had not met with him in person at that point.

24 Q. So up to this point your conversations with him were by
25 telephone?

1 A. Correct.

2 Q. And in this e-mail does it accurately describe what --
3 in your e-mail to Mr. Richards, does it accurately describe
4 what Mr. Jacir had been telling you about the appealability of
5 the decision?

6 MR. SCHWARTZ: Objection.

7 THE WITNESS: Well --

8 THE COURT: Just one moment. There's an objection.

9 MR. SCHWARTZ: It's another hearsay objection.

10 THE COURT: It's clearly hearsay. So I guess the
11 issue is for what purpose is it being offered?

12 MR. C. COOPER: It's simply being offered to show that
13 he communicated this to the client. He's passing it on.

14 THE COURT: It's not being offered as substantive
15 testimony?

16 MR. C. COOPER: Correct.

17 MR. SCHWARTZ: No objection to that extent.

18 THE COURT: The objection is overruled. You may
19 continue.

20 THE WITNESS: The e-mail indicates, my reading, my
21 synopsis of reading the opinion of the Attorney General and
22 what Jacir had been communicating to me with respect to the
23 law.

24 BY MR. C. COOPER:

25 Q. So by this time had Mr. Jacir indicated to you that the

1 decision could not be appealed?

2 A. Yeah. Well, that was always Mr. Jacir's opinion but,
3 you know, you asked me if I had come to any conclusions. I was
4 in the process of doing my own investigation.

5 Q. So let's talk about the first meeting -- the first time
6 you actually met with Mr. Jacir. I think you indicated that
7 occurred in April of 2004?

8 A. Yes.

9 Q. Where did that take place?

10 A. In Caracas.

11 Q. Where in particular?

12 A. Well, Mr. Richards and I flew to Caracas. We were
13 staying at a hotel that Dr. Jacir had suggested. He came to
14 pick us up. I don't recall, we may have had lunch at the hotel
15 but then we went to his home. Dr. Jacir had an office in his
16 home. And by that I mean he had a working office with
17 computers and printers and law books and a lot of information
18 on the Bandagro matter. In addition to that, he had a law
19 office in a business section of Caracas. But that first
20 meeting after I think having lunch, we went to his home.

21 Q. Why did you and Mr. Richards travel to Caracas,
22 Venezuela to meet with Mr. Jacir?

23 A. Because we were investigating the Bandagro matter. We
24 wanted to learn the facts about the Bandagro matter. We wanted
25 to understand the law. We wanted to understand what Dr. Jacir

1 had to say about it. And as I told you, it was difficult to
2 communicate with Dr. Jacir on the telephone and so the decision
3 was made to go to Caracas and start investigating this matter
4 in person in Caracas.

5 Q. How long did the meeting last with Mr. Jacir?

6 A. I think the first day we must have been there, I don't
7 know, eight, nine hours. It was an all day, pretty exhaustive
8 meeting. Went into the evening and then I think we met again
9 the next day.

10 Q. Did Mr. Jacir provide you with any documents?

11 A. Yes. Essentially the way the meeting went was
12 Mr. Richards and I are in Dr. Jacir's office. I'm speaking
13 with Dr. Jacir in Spanish, essentially, you know, trying to
14 extrapolate from him lots of information. Whenever he would
15 tell me something, for example, that I needed more
16 clarification, I recall that we were having a discussion about
17 the word *vinculante*, you know, final and binding, and I told
18 him -- and I recall that we -- you know, I was very --
19 obviously that was of great interest to me that this was a
20 final and binding opinion. I made him get the text of the
21 statute. We were reading the text of the statute and looking
22 at various -- I said, let me see a legal dictionary.

23 So it was sort of that sort of a give and take about a
24 number of issues and Mr. Richards of course would, like,
25 patiently wait for about ten minutes of me and Jacir talking

1 and he would bug me to tell him what was said and I would
2 summarize the key aspects of it. At one time he jokingly said,
3 what, you talk for ten minutes and tell me he said yes? And it
4 was sort of that sort of thing because I was trying to give him
5 just the material aspects of what was happening so we could
6 keep working with Jacir because I was concerned.

7 His wife, you know, was very attendant to Dr. Jacir and
8 whether or not he was getting tired and needed to rest. You
9 know, so those dynamics were in play as well.

10 Q. So let's discuss what took place at that meeting. Can
11 you tell the Court over the course of this nine-hour meeting
12 what was discussed with Dr. Jacir?

13 A. Essentially, you know, the history of his involvement,
14 the history of how he had initially filed the claim on behalf
15 of Gruppo Triad. The Minister of Finance had rejected the
16 claim on the basis that the notes were faked and all prior
17 investigations of the Bandagro notes had determined that they
18 were fake, and how Dr. Jacir had then written to the Office of
19 the Presidency of Venezuela on behalf of his client requesting
20 that -- essentially saying, look, you can't just deny my
21 client's claim without doing an investigation and so you at
22 least owe my client investigating these notes.

23 So he explained how he had written the Office of the
24 Presidency. He explained that there had been a powerful member
25 of the General Assembly that had also become involved and had

1 also sent a letter requesting an investigation how as a result
2 of those directives from the Office of the Presidency and as a
3 directive from Luis Alvaray, the member of the General Assembly
4 that was head of a subcommittee involving Public Credit. The
5 Minister of Finance had been -- opened an investigation on
6 these specific Bandagro notes of Gruppo Triad.

7 He showed us documents. I didn't take documents at that
8 time but showed documents about the investigation and the
9 process of the Organic Law. That was the first time that I had
10 gotten an opportunity to actually speak to him person to
11 person. How the Organic Law came about, why he was so
12 convinced that -- of the correctness that it was a final and
13 binding decision.

14 We may have talked at that point in time about, you
15 know, other potential people that I could speak to because
16 obviously, I mean, I wanted to speak to other attorneys, right.
17 I wanted to speak to, you know, what I might call independent
18 attorneys, right, that weren't involved in the case, get their
19 opinions about the law. We may have had discussions about
20 potential experts.

21 Then I think that -- I don't know if it was either then
22 or the next day, it was arranged for us to meet with Oscar
23 Guzman.

24 Q. Before we get to that, did you end up consulting with
25 other attorneys, other than Mr. Jacir, about the effect of the

1 October 2003 Attorney General opinion?

2 A. I did, but not during that trip. I laid the groundwork
3 for wanting to search out other attorneys. Then after that
4 trip I followed up with speaking to other attorneys and then I
5 actually came back to Caracas to speak to a number of other
6 attorneys.

7 Q. Could you identify the other attorneys that you
8 consulted with?

9 A. Well, one of them was Ivan Badell who was a former --
10 the equivalent -- he was *Fiscal General* which kind of the
11 equivalent of the head of the justice department in the United
12 States. I then consulted with a former Attorney General of
13 Venezuela.

14 Q. Who is that person?

15 A. Duque Corredor. I initially started consulting with a
16 partner of his by the name of Irribarren who was a younger
17 attorney but worked in the administrative sector but when it
18 came time to file an affidavit of course, you know, we wanted
19 to go with the former attorney general and so then I started
20 consulting with Duque Corredor.

21 Then I consulted with a couple of other administrative
22 law lawyers that I don't recall their name but, you know,
23 again, to get their thoughts and opinions about it.

24 At one point in time, and I don't recall when I first
25 met Rafael Chavero but I had spoken to Rafael Chavero about the

1 Organic Law before I actually made the decision to retain him
2 as an expert because I already had Ivan Badell and Duque
3 Corredor as experts.

4 Q. All the individuals that you mentioned that you
5 consulted with, were they all Venezuelan attorneys?

6 A. Yes.

7 Q. Could you turn to Exhibit 134 in binder 6, please.

8 THE COURTROOM DEPUTY: Plaintiff's Exhibit 134.

9 BY MR. C. COOPER:

10 Q. Mr. Alcalde, do you recognize Exhibit 134?

11 A. Yes.

12 Q. What is Exhibit 134?

13 A. Looks like an e-mail that I -- it's a translation. The
14 first page is a translation. I don't believe that Dr. Jacir
15 ever e-mailed me in English.

16 Q. I think if you look at the back of the exhibit I think
17 you'll see the Spanish. In each of these, the English precedes
18 the Spanish version.

19 A. It's an English translation of an e-mail that Dr. Jacir
20 would have sent to me regarding the CV for Dr. Badell.

21 Q. This e-mail is dated May 22nd, 2004. Did you meet with
22 Dr. Badell?

23 A. Yes. When I went back in June. And I also would have
24 spoken to him on the phone.

25 Q. Did you ask Dr. Badell for his opinion regarding the

1 October 3rd, 2003 Attorney General opinion?

2 MR. SCHWARTZ: Objection. Beyond any answer of yes or
3 no.

4 THE COURT: I'm sorry?

5 MR. SCHWARTZ: The question is a yes or no question.
6 That's fine. But Mr. Alcalde has a tendency to run with the
7 ball a bit and I want to make sure he doesn't run with this
8 one.

9 THE COURT: And this, again, is being offered not for
10 the truth but simply to indicate what was told to the clients
11 in this case.

12 MR. C. COOPER: Exactly. What information was
13 gathered and what was told to the client.

14 THE COURT: On that basis you can ask the question and
15 it can be answered.

16 MR. SCHWARTZ: As long as this is not a back-door
17 opinion from a Venezuelan law expert.

18 THE COURT: I think I ruled.

19 MR. SCHWARTZ: Okay.

20 THE WITNESS: Yes, he gave me an opinion.

21 BY MR. C. COOPER:

22 Q. And, Mr. Alcalde, did you pass that opinion from
23 Dr. Badell on to the client --

24 A. Yes.

25 Q. -- Skye Ventures?

1 What opinion did Dr. Badell give you about the effect of
2 the Attorney General's October 2003 opinion?

3 A. Well, let me make clear first, Dr. Badell's opinion is a
4 pleading in this case filed and it was a sworn affidavit which
5 he signed. So his opinion at that time, but all his opinions,
6 of course, are a matter of affidavit and of record in this
7 case. But his opinion was that the opinion of the Attorney
8 General of Venezuela was final and binding, and we had a
9 discussion about the Organic Law which by the time -- by that
10 time I had already read both the legislative intent and the
11 relevant articles. And his opinion is that this was subject --
12 that this investigation was an administrative investigation
13 under the Organic Law, the Republic of the Attorney General,
14 and that she had issued a final and binding opinion.

15 Q. You indicated that Dr. Badell's opinions were committed
16 to writing. Did you ask him to put his opinions in writing?

17 A. At some point later his opinions were committed to
18 writing and were put in an affidavit and were filed in a
19 pleading in this case.

20 MR. C. COOPER: Could I ask that the witness be handed
21 Exhibit 86 in the same binder?

22 THE COURTROOM DEPUTY: Plaintiff's Exhibit 86.

23 BY MR. C. COOPER:

24 Q. Before we turn to Exhibit 86, Mr. Alcalde, you've
25 indicated that you met with Dr. Badell. How many times do you

1 recall meeting with him?

2 A. I don't know if I met with him more than once. I spoke
3 to him more than once, of course, because later we -- I spoke
4 to him preparing the affidavit.

5 Q. Where did you meet with him?

6 A. In Caracas.

7 Q. Was this a trip that was different than the trip you
8 described?

9 A. I think it was in June.

10 Q. Was anyone else with you in the meeting with Dr. Badell?

11 A. I don't recall if Mr. Richards was with me or not.

12 Q. Now, if you turn to Exhibit 86. Do you recognize
13 Exhibit 86?

14 A. Again, the beginning of Exhibit 86 is an English
15 translation. I would have received the Spanish copy that
16 starts at SKYE308 which is -- appears to me to be sort of a
17 preliminary letter that he sent to me because -- I could be
18 wrong about this, but I think later I reformatted this perhaps
19 in a more affidavit format, but I don't recall. I'd have to
20 look at the pleadings to see.

21 But this is -- this document contains opinions of
22 Dr. Badell.

23 Q. And this document is dated July 22nd, 2004. Had
24 Dr. Badell given you opinions verbally before that date?

25 A. Yes.

1 Q. And were the opinions that he gave to you orally, were
2 they consistent or different than the opinions that are
3 reflected in writing in Exhibit 86?

4 MR. SCHWARTZ: Excuse me. Same continuing objection,
5 Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Well, I mean, he elaborated more in the
8 written form than perhaps the oral conversation.

9 BY MR. C. COOPER:

10 Q. Approximately how many different Venezuelan attorneys
11 did you consult with in addition to Mr. Jacir who obtained
12 opinions as to whether the Attorney General's October 2003
13 opinion was final and binding?

14 A. Badell, Duque Corredor, his partner Irribarren, Rafael
15 Chavero and I think there was one or two other younger lawyers
16 that I recall having lunch with who had been -- who also
17 practiced in the administrative sector.

18 Q. Were those opinions that you obtained from these various
19 Venezuelan lawyers important to your due diligence?

20 A. Of course.

21 Q. Why?

22 A. Because it was very important to understand if the
23 opinion of the Attorney General of Venezuela regarding the
24 validity of the Bandagro notes that were in that tranche, given
25 the fact that Skye Ventures was thinking of investing in that,

1 it was very important to understand whether that opinion was
2 final and binding under the law of Venezuela. In other words,
3 it was akin to a final judgment. And one of my principal
4 tasks, if not my principal task at that time, was to make that
5 determination, marshal expert's opinion on that issue and
6 communicate that to Mr. Richards. It was no doubt in my mind
7 that that's what Mr. Richards was expecting from me.

8 Q. So did you rely on the opinions of these consultants in
9 providing your opinion, your ultimate opinion, to Skye
10 Ventures?

11 A. I relied on everything I studied and read on my own, and
12 on the opinions of all these Venezuelan attorneys.

13 Q. During your due diligence did anyone you consulted with
14 provide you with an opinion or indicate in any way that the
15 Attorney General's October 2003 opinion was not final and
16 binding?

17 A. Never.

18 Q. Let's turn to that opinion, please. It was Exhibit 3 in
19 binder number 1. Binder 2, I'm sorry.

20 THE COURTROOM DEPUTY: Plaintiff's Exhibit 3.

21 BY MR. C. COOPER:

22 Q. Mr. Alcalde, do you have Exhibit 3 in front of you?

23 A. I do.

24 Q. I'm going to work with the English translation. If you
25 need to consult with the Spanish, of course as a Spanish

1 speaker, feel free to do so.

2 Let's turn to the opinion. Turn to the first page,
3 please.

4 Mr. Alcalde, I'm going to ask you some questions and
5 have you walk us through the opinion, if you would. Let's
6 begin with the first page and essentially the header-type
7 information and the first paragraph. What, if anything, did
8 you learn from the opening information in this document?

9 A. Well, I think one of the first things to note is that
10 this is on the header of the Office of the Attorney General.
11 Of course this is a translation. But you note that the header,
12 the slogan of the Attorney General is in defense of the
13 nation's patrimony.

14 So this is an opinion being rendered by the
15 Constitutional Officer of Venezuela whose job is, as we went
16 over, when we discussed the legislative intent of the Organic
17 Law, and when we discussed the 1999 constitution, it is the
18 principal lawyer, it is the lawyer of the state whose job it is
19 to protect and defend the patrimony of the nation. So that's
20 the first thing that calls out to me when I look at this
21 document.

22 Then we see that this is a document that is directed to
23 another minister of the government of Venezuela. Not just
24 another minister but the minister in charge of the finances of
25 Venezuela.

1 So in this first page, and of course it's dated
2 October 3rd of 2003, and in this first page we learned that
3 there's a number down there which says administrative file
4 number MF-DGCJ-1-2003 which I think we'll see is the number --
5 the administrative file number of the administrative
6 investigation that was open by the Minister of Finance as a
7 result of Dr. Jacir's request to the President, to the Office
8 of the Presidency of Venezuela by Luis Alvaray, the member of
9 the General Assembly that was in charge of the Subcommittee on
10 Credits of the General Assembly.

11 So this was a very important document addressed by the
12 Attorney General to one of the most important ministers in the
13 government of Venezuela.

14 MR. SCHWARTZ: Objection, Your Honor. And I'm going
15 to move to strike. Here we have a situation now where
16 Mr. Alcalde, not an expert and not proposed as an expert, is
17 going to begin a tutorial concerning this opinion about --

18 THE COURT: Let's go back to what we talked about on
19 Friday. We don't have a jury here. I'm the trier of fact.
20 That's one of my roles. The other, though, is the interpreter
21 of the law. As I mention to you, usually we don't take expert
22 opinion on what the law is and Mr. Alcalde, as I understand,
23 has not been offered as an expert. His testimony now is to
24 what was done on behalf of the client.

25 We're going to get to experts though. They are not

1 going to be treated as experts. They're going to be treated as
2 we discussed, as people who will inform me as to the law. But
3 theirs will be more akin to filing amicus briefs or more your
4 summations of memorandums of law.

5 To be clear on that, we're not taking expert opinion on
6 the law and I'm not treating it that way. This is his
7 rendition. And we're going to hear from people who are being
8 offered as experts, but again, within the confines of how this
9 trial is going to go this will be simply to help me, in the
10 end, reach a decision on what the law of what it is that
11 applies here.

12 MR. SCHWARTZ: May I be heard further on this?

13 THE COURT: Briefly.

14 MR. SCHWARTZ: There are experts from both sides --

15 THE COURT: I understand.

16 MR. SCHWARTZ: -- on the Organic Law and related
17 matters.

18 THE COURT: But this has to be relayed to a party and
19 that's what I'm taking this for right now and nothing more than
20 that.

21 MR. SCHWARTZ: Mr. Alcalde is in a somewhat unique
22 position having been counsel of record in the case for four
23 years.

24 THE COURT: True.

25 MR. SCHWARTZ: And this testimony is trending toward a

1 piece of advocacy by erstwhile trial counsel.

2 THE COURT: Again, I understand you are each
3 submitting someone to me you believe who is the most
4 knowledgeable in Venezuelan law. I will rely on the two of
5 them when we get to that issue.

6 BY MR. C. COOPER:

7 Q. Mr. Alcalde, as you read through and absorbed the
8 October 3rd, 2003 opinion from the Attorney General, you were
9 addressing what was significant to you as you formed your
10 opinions about the effect of this Attorney General decision.
11 We're in the first paragraph. You've identified the
12 administrative file, you've identified who this is addressed
13 to. Is there anything else in the initial paragraph that was
14 of significance to you?

15 A. Yes. So this is addressing -- after we talk about what
16 the administrative file number was given, it's addressing
17 promissory notes, presumably issued by the Bandagro bank
18 identified as ICC290 and ICC322 filed by Miguel Jacir on behalf
19 of Gruppo Triad. And what was significant to me also about
20 this first paragraph was that it was for the purpose of having
21 this office, meaning the Attorney General, issue its legal
22 opinion in accordance with the provisions of Article 56 of the
23 Organic Law of the Attorney General.

24 Q. Could you remind the Court what Article 56 of the
25 Organic Law of the Attorney General is?

1 A. Yes. Article 56 was the article whereby the Attorney
2 General is to review the investigation of the ministry that
3 supposedly owes a debt to make for the Attorney General to rule
4 on whether that claim is in accordance with law or not and to
5 render a final and binding opinion.

6 Q. The opinion then turns to a section that in English says
7 administrative background. If we turn to page 2, I'd like you
8 to kind of walk through this report as to what was significant
9 and why it was significant to you as you were attempting to
10 understand the impact of this decision.

11 A. Well, one of the things that I think was very
12 significant to me and which I conveyed to Mr. Richards was that
13 in the opening of this opinion, the Attorney General sort of
14 recounts the background of how this investigation came to be.
15 And so in this particular section, the Attorney General is
16 recounting how these Claimants, meaning Gruppo Triad, have
17 exhausted their attempts to get these notes paid by the
18 government of Venezuela but they have run into this general
19 opinion, this matrix of opinion, particularly within the
20 Ministry of Finance of Venezuela but really beyond that, that
21 the -- that all the Bandagro notes are counterfeits. And that
22 because of this opinion that all the Bandagro notes are
23 counterfeit, they have been unable to get what they consider to
24 be a fair and equitable investigation of the particular
25 Bandagro notes that they hold. And they in fact, the Attorney

1 General in fact notes here that since the year 1991, if we're
2 looking at the third paragraph here of the second page --

3 Q. You say '91 or 1981?

4 A. I'm sorry. 1981. This acknowledgment that there are
5 counterfeit notes floating in the international markets. And
6 that as a result of that, you know, the opinion then goes on to
7 discuss how the Office of the President was contacted.

8 If we turn to the third page, the Office of the
9 President was contacted, the General Assembly got involved, and
10 the Minister opened the investigation.

11 Q. Before we get to that, was there any significance to you
12 in the fact of the reference or acknowledgment that there were
13 duplicate notes or counterfeit notes?

14 A. The significance of that is that, well it's not just
15 here but as we understand the opinion of the Attorney General,
16 the Attorney General clearly understood that there were
17 counterfeit Bandagro notes alleged to be in the international
18 markets, and as we'll see later, clearly understood that there
19 had been prior investigations rejecting these notes or other
20 notes.

21 Q. And then you indicated there's a reference to the
22 contacts made by the Office of the President and by a member of
23 the Venezuelan National Assembly. Where do we see that?

24 A. We see that beginning at the bottom of page 2. The
25 Claimants request the intervention and prompt action of

1 different authorities, to wit, for the record and then listed
2 there is the private secretary to the President of the Republic
3 and they cite to the letter which I believe is part of the
4 record. And also to the request by Luis Velazquez Alvaray, the
5 President of the National Assembly, as translated here, the
6 Public Spending Oversight Committee, requesting an
7 investigation.

8 Q. Could you turn to Exhibit 14 and Exhibit 16, both in
9 binder 3? We have these in our exhibit binder. I believe
10 they're also joint exhibits. I believe Exhibit 14 is Joint
11 Exhibit 17 and the next is Joint Exhibit 22.

12 THE COURTROOM DEPUTY: Plaintiff's Exhibit 14 and
13 Plaintiff's Exhibit 16.

14 BY MR. C. COOPER:

15 Q. Let me begin with the first one, Mr. Alcalde,
16 Plaintiff's Exhibit 14. The Attorney General's October 2003
17 opinion refers to an official letter number 711 dated
18 June 25th, 2002 from the secretary to the Office of the
19 President. Looking at Exhibit 14, could you identify this for
20 us?

21 A. Yes. This is a copy of a letter that was in the
22 Ministry of Finance report. The interesting thing about this
23 letter is you'll see the word Miraflores. Miraflores is the
24 equivalent of the White House in Venezuela. It's the palace of
25 the President. And this is the letter that came from

1 Miraflores from the secretary of the President of the Republic
2 requesting that the Minister of Finance investigate the claim
3 of Gruppo Triad.

4 Q. Did the letter request that the Minister do anything
5 after investigating?

6 A. To report -- yeah. If what you mean is to report back
7 the results of the investigation.

8 Q. Could you turn to Exhibit 16, please? The Attorney
9 General, as you've indicated, the Attorney General's
10 October 2003 report also referred to correspondence from a
11 member of the General Assembly, Luis Velazquez Alvaray?

12 A. Yes.

13 Q. Do you recognize Exhibit 16?

14 A. Yes. This is from the Minister of Finance report as
15 mentioned in the Attorney General's opinion is the letter of
16 Luis Velazquez Alvaray requesting an investigation of the
17 Bandagro notes. But Alvaray does one thing here. He doesn't
18 just request an investigation, he says if there are crimes have
19 been committed --

20 Q. I'm sorry. What page are you referring to just so we
21 can follow?

22 A. Let me look at the English. So if we look the page
23 marked JACIR61-03, the translation says, by reason of these
24 issues and having regard to the powers established in Article
25 223 of the Constitution, I urge you to order the relevant

1 investigation be carried out to determine in a reliable manner
2 whether these promissory notes are genuine, if they were indeed
3 issued by Bandagro and whether they were acknowledged and
4 backed subsequently by the Republic, and whether, in short,
5 these debts are legitimate or not.

6 And then he goes on to say, if these promissory notes
7 are counterfeit, an immediate report should be sent to the
8 public prosecutor's office so that relevant criminal
9 investigations may be made.

10 Q. This is a letter from Luis Velazquez Alvaray addressed
11 to the Minister of Finance Dr. Tobias Nobrega, what is the date
12 of this letter? Or better yet, can you tell from the
13 document --

14 A. The letter doesn't appear to have a date on the first
15 page. It does have a stamp, in the Spanish version, appears to
16 have a stamp that appears to be from the Minister of Finance
17 indicating that it was received in the Office of the Minister
18 on 14 February, 2003.

19 Q. During your due diligence did you learn whether or not
20 Minister Nobrega had responded to the letter from Luis
21 Velazquez Alvaray?

22 A. Well, he responded in two ways. Later on when I was
23 able to see the Minister of Finance investigation, I believe
24 that he responded saying that he was going to investigate the
25 matter. And of course his primary response was that he opened

1 an administrative file on the matter.

2 Q. If you turn to Exhibit 17, please.

3 THE COURTROOM DEPUTY: Plaintiff's Exhibit 17.

4 BY MR. C. COOPER:

5 Q. Do you recognize Exhibit 17?

6 A. Exhibit 17 is -- I'm assuming there's no English
7 translation. I only have the Spanish here. But it is a
8 letter -- purports to be a letter from Tobias Nobrega Suarez,
9 Minister of Finance to Luis Velazquez Alvaray, I don't know,
10 maybe dated 10 March, 2003, where he is essentially stating
11 that -- acknowledging receipt of his letter of 14 February
12 where he, meaning Alvaray, presents or puts forth the matter
13 about the claim of Gruppo Triad with respect to the Bandagro
14 notes. And he states in there that he has instructed his
15 (exhibit 17) judicial consul within that ministry, within his
16 ministry. And also the judicial counsel of the Office of
17 National Credit to essentially start inquiries investigation of
18 this matter.

19 Q. And does he say what the purpose of that investigation
20 would be?

21 A. He says that it is to, you know, to confront, review the
22 existing documentation and to make pertinent inquiries with the
23 end of determining if said credits are or are not legitimate
24 which results thereof will be informed in due order.

25 Q. And according to the Attorney General's opinion, did the

1 Ministry of Finance take formal action in response to the
2 letters received?

3 A. Yes. The Minister of Finance opened an administrative
4 inquiry.

5 Q. If you could turn to Exhibit 18, please, the same
6 binder.

7 THE COURTROOM DEPUTY: Plaintiff's Exhibit 18.

8 BY MR. C. COOPER:

9 Q. Do you recognize Exhibit 18?

10 MR. SCHWARTZ: Your Honor, just for the purposes of
11 clarification. This is not a letter that was either sent or
12 received by Mr. Alcalde. And if this is a form of examination
13 that you're finding helpful in the context of the bench trial,
14 I'm not going to continue objecting. But in essence,
15 Mr. Cooper is just -- he doesn't needs Mr. Alcalde to make this
16 presentation. It's just the discussion between two trial
17 lawyers presenting the plaintiff's case.

18 THE COURT: Mr. Cooper.

19 MR. C. COOPER: Your Honor, what I'm trying to do is
20 these were attachments, I don't believe there's any dispute, to
21 the ministry of Finance's report. I'm simply trying to walk
22 through as efficiently as possible the order of events so the
23 Court can understand.

24 THE COURT: To be clear, I'm going to assume this
25 witness sent the Attorney General's opinions, the Finance

1 Minister's opinions.

2 MR. C. COOPER: And attached.

3 THE COURT: Probably not the letters in between. Is
4 that a correct assumption?

5 MR. C. COOPER: I'm sorry?

6 THE COURT: The letters in between sort of tee up the
7 opinions.

8 MR. C. COOPER: They do. They were attachments to the
9 Ministry's reports.

10 THE COURT: On that basis we'll hear them briefly.

11 THE WITNESS: This appears to be an internal memo that
12 was within the Minister of Finance binders that basically it's
13 just internally sending to Oscar Guzman the letter of Velazquez
14 Alvaray.

15 BY MR. C. COOPER:

16 Q. Could you look at Exhibit 19, please?

17 THE COURTROOM DEPUTY: Plaintiff's Exhibit 19.

18 BY MR. C. COOPER:

19 Q. And before you do that, Mr. Alcalde, the Attorney
20 General's opinion, does her opinion indicate whether the
21 Finance Ministry's legal department took steps to initiate an
22 investigation?

23 A. Yes.

24 Q. What is Exhibit 19?

25 A. It is a letter from Oscar Guzman to a counsel in Miami,

1 United States, informing that the Ministry has opened an
2 investigation on the Bandagro notes, on the specific Bandagro
3 notes that are listed in this document and that a lawyer from
4 the Ministry by the name of Hespie Hurtado has been appointed
5 to carry out formalities with respect to the possession of
6 those Bandagro notes which happen to be located or physically
7 located in Miami.

8 Q. The notes that are listed there list notes 1/12, 2/12,
9 3/12, 4/12, 5/12, 6/12, 7/12 and 8/12. Could you remind the
10 Court the numbers of the notes that are at issue in this case?

11 A. 7/12 and 8/12.

12 Q. Who was Hespie Hurtado, do you know?

13 A. An attorney within the Ministry of Finance that was
14 involved in the Minister of Finance investigation under the
15 direction of Oscar Guzman.

16 Q. Based upon your review of the -- let me ask a
17 preliminary question. You've indicated you reviewed the
18 Attorney General's October 2003 opinion. Did you review the
19 Ministry of Finance materials that led to that opinion?

20 A. Yes.

21 Q. Based upon your review of the Ministry of Finance
22 materials or the Attorney General's opinion or both, do you
23 have an understanding as to the role, if any, that Hespie
24 Hurtado played in this Bandagro investigation?

25 A. She did an inspection on notes that were located in

1 Miami and reported back as to what she found.

2 Q. Could you turn to Exhibit 20, please, also in binder 3?

3 THE COURTROOM DEPUTY: Plaintiff's Exhibit 20.

4 BY MR. C. COOPER:

5 Q. Mr. Alcalde, what is Exhibit 20?

6 MR. SCHWARTZ: I'm going to object, Your Honor. This
7 document was the subject of testimony by its author. Again,
8 Mr. Alcalde had no role in this investigation. This is akin to
9 my putting Mr. Lucas on the stand.

10 THE COURT: Tell me if I'm wrong, this is not going to
11 go to a major issue in the case. This is sort of a lead up to
12 the reports that are at issue. I don't want to get us on
13 things that aren't going to matter here. Will this come in
14 through other witnesses?

15 MR. C. COOPER: Your Honor, it's true that Mr. Guzman,
16 who wrote the Ministry's report, identifies the attachments.
17 It's in transcript form. We're happy to -- we've designated
18 the transcript form.

19 THE COURT: I don't see any harm here. I'd want to
20 hear more from you. This is just a document that says I'm also
21 joining in this designation of the attorney as an investigator.

22 MR. SCHWARTZ: This is symptomatic of a more
23 widespread pattern that's developing here which I've been
24 repeatedly now objecting to and I'm trying to --

25 THE COURT: I take these one at a time. Go ahead.

1 MR. SCHWARTZ: Taking this one. This gentleman,
2 Mr. Alcalde, had nothing to do with the issuance or receipt of
3 this document. Mr. Cooper is doing a presentation one trial
4 lawyer talking to another to display the documents he likes in
5 the case. I could call Mr. Lucas on our case and do the same
6 thing but that's not how you do trials. You need witnesses
7 with specific knowledge.

8 THE COURT: I'm taking this to tell a story. I don't
9 see any harm here to either side. If this was used by
10 Mr. Alcalde and forming what opinion he gave, the objection
11 would be improper.

12 The objection is overruled. You may continue.

13 MR. C. COOPER: Thank you.

14 BY MR. C. COOPER:

15 Q. Mr. Alcalde, what is Exhibit 20, please?

16 A. It's the opening of the investigation, basically, by
17 Oscar Guzman to comply with the Minister of Finances' orders.

18 Q. This document mentions Hepsie Hurtado. It also
19 mentioned a Carlos Delgado Morean. Do you see that?

20 A. Yes.

21 Q. You mentioned previously a Mr. Delgado. Is that the
22 person that you were referring to?

23 A. It was.

24 Q. As a result of the Ministry's materials and the Attorney
25 General's opinion, do you have an understanding as to the role,

1 if any, that Mr. Delgado played in the Ministry's
2 investigation?

3 A. In the Ministry's investigation, my understanding of his
4 role was to, based on what I read, was in discussions with him
5 probably to simply go to Switzerland and do pretty much the
6 same thing that Hespie Hurtado did in Miami, which was to
7 inspect the notes. There were some notes in Miami and some
8 notes in Switzerland. Hespie inspected the notes in Miami,
9 Delgado inspected the notes in Switzerland.

10 Q. And Skye's notes were in which location?

11 A. Miami.

12 Q. Could you turn to Exhibit 21, please?

13 THE COURTROOM DEPUTY: Plaintiff's Exhibit 21.

14 BY MR. C. COOPER:

15 Q. Do you still have Exhibit 3 handy, Mr. Alcalde?

16 A. Yes.

17 Q. Could you look at I think it's the third page of
18 Exhibit 3?

19 A. What's the bates number?

20 Q. Looking for a paragraph with the reference to a date of
21 April 29th, 2003.

22 THE COURT: Mr. Schwartz?

23 MR. SCHWARTZ: Are we within Exhibit 21 now?

24 THE COURT: It's my understanding.

25 THE WITNESS: Are you asking me to look at 3 or 21?

1 MR. C. COOPER: I've toggled back to the Attorney
2 General opinion in Exhibit 3.

3 MR. SCHWARTZ: When 21 re-emerges, if it does, I'll
4 have something to say. Three I'm okay with.

5 THE WITNESS: I'm sorry. I didn't hear that.

6 MR. SCHWARTZ: If and when Mr. Cooper returns to
7 Plaintiff's Exhibit 21, I'll have a document-specific
8 objection.

9 THE COURT: All right.

10 BY MR. C. COOPER:

11 Q. On page 4, Mr. Alcalde, do you see a reference to the
12 date of April 29, 2003?

13 A. Yes.

14 Q. Page four of the Attorney General's October 2003
15 opinion.

16 A. I'm looking at the translation and it says page 3.
17 Where I see April 29, 2003 the Minister of Finance has issued
18 the respective decree. It says 3 at the upper right-hand
19 corner and it's bates stamp SKYE5600.

20 Q. Thank you. Now you see the reference of April 29, 2003
21 in the Attorney General's opinion?

22 A. Yes.

23 Q. Turning to Exhibit 21. Based on your review of the
24 Ministry's material and the Attorney General's opinion, do you
25 have an understanding as to what this document is?

1 MR. SCHWARTZ: Objection. This document, Your Honor,
2 has a specific authenticity problem associated with it where
3 Mr. Alcalde's lack of personal knowledge presents a serious
4 problem.

5 THE COURT: Give me a little cue in. What's the
6 authenticity issue?

7 MR. SCHWARTZ: The authenticity issue with regard to
8 Plaintiff's Exhibit 21 is that there are two different versions
9 of this essential document in circulation and an issue about
10 which, if either of them, is the one that was part of the
11 official file of the Ministry of Finance. And this is
12 something well beyond the competence of Mr. Alcalde. So you
13 may want him to tell a story or permit him to tell the story
14 about what went on in this investigation from his distant
15 perspective but as to this document, he's in no position to
16 authenticate.

17 THE COURT: Mr. Cooper.

18 MR. C. COOPER: Thank you, Your Honor.

19 As the Court probably would expect, during the course of
20 this litigation we asked the defense to produce authentic
21 copies of the Ministry's report and its attachments. The
22 document that's within this exhibit that's bates stamped FS507
23 and 508 was identified by Defendants as part of the bates range
24 of the authentic copies of attachments to the Ministry's
25 report. I'm happy to provide the Court with --

1 THE COURT: I'll take your word at this point.

2 Mr. Schwartz.

3 MR. SCHWARTZ: I think Mr. Cooper is referring to the
4 wrong version of this document actually.

5 THE COURT: The FS documents start at the very end.
6 Make sure I understand this. We've got a JACIR set of
7 documents and we have a set of Skye documents. Then at the end
8 we have two pages that are FS documents.

9 MR. SCHWARTZ: Yes. Herein lies the problem. And
10 this is an issue well beyond the competence of Mr. Alcalde and
11 this dispute here is something of a story unto itself and it
12 may take a few minutes to go into. But this is a good reason
13 why Mr. Alcalde, he couldn't tell you possibly which of these
14 two documents --

15 THE COURT: Let me ask you because I'm a little
16 confused. In this exhibit there are three parts. Why don't we
17 take a look at these. The last two pages, let me make sure I'm
18 clear, this is what has been represented to be what your client
19 submitted. Those two pages aren't the issue? Am I correct in
20 assuming that?

21 MR. SCHWARTZ: That's part of the issue.

22 THE COURT: All right.

23 MR. SCHWARTZ: If you'll indulge me for a moment, I'll
24 try and give you the history of the issue. The document with
25 the FS bates numbers at the end.

1 THE COURT: These are the last two pages, for the
2 record.

3 MR. SCHWARTZ: Correct. Was produced by our
4 predecessor counsel early in the process. If this will be
5 helpful to you, because there will be different designations on
6 documents where history matters, the FS documents were among
7 the original documents produced by the defendants many years
8 ago. And those were produced. Mr. Cooper is right to that
9 extent. However, much later -- and by the way, you'll notice
10 the FS version of this, not signed. That's important.

11 The version at the beginning, which is also
12 translations, is the version produced by Miguel Jacir, the
13 Gruppo Triad lawyer, who was involved in the administrative
14 investigation of 2003. And you need to evaluate the bates here
15 in the context of our position that this entire investigation
16 was --

17 THE COURT: You're saying the first two pages are
18 simply not accurate and ties into your case. Essentially
19 they're forgeries at play here?

20 MR. SCHWARTZ: Not necessarily. Let's look at the
21 Spanish origins. Page JACIR57001 and 002.

22 THE COURT: I'm sorry. The first two pages.

23 MR. SCHWARTZ: But you have to look at the Spanish
24 originals to track this complex argument. If you look at the
25 Spanish original, it is signed or appears to be signed by

1 Tobias Nobrega Suarez, the Minister of Finance. If you look at
2 the first page in the upper left-hand corner it has number 1335
3 on it. Then there's a list of notes here which you're going to
4 see in a moment is not the same as the list -- I'll make this
5 easy to follow.

6 If you look at the first block of notes on the signed
7 Spanish Jacir version, first block ends note 8/12.

8 THE COURT: All right. But let me. So long story
9 short, you dispute these, the authenticity and the accuracy of
10 the first two pages especially; is that right? Just is that
11 right?

12 MR. SCHWARTZ: Yes.

13 THE COURT: So here's my point. If these are
14 contested documents, I'm going to be much more cautious here.
15 This is a bench trial. I don't want to be sloppy but if this
16 is important then I want to hear from you on this. This is the
17 meat of the case it sounds like.

18 MR. SCHWARTZ: It's part of it.

19 THE COURT: And this is not going to be the witness
20 who's going to resolve this for us. He's a document identifier
21 as far as this document goes. That's your whole point, right?

22 MR. SCHWARTZ: Yes. And the plaintiff is relying on
23 the unsigned version at the end. I'm telling you there's a
24 discrepancy between these two documents and it may be neither
25 is authentic. But more importantly, this was the subject of

1 questioning of the witness who would know.

2 THE COURT: So jumping ahead, in the event that I find
3 a discrepancy, is it material to your position?

4 MR. SCHWARTZ: Absolutely.

5 THE COURT: All right. Just briefly give me a heads
6 up as to why I should -- what makes it material?

7 MR. SCHWARTZ: Because the version in the Ministry of
8 Finance files, the unsigned version without the number, has a
9 different list of notes.

10 THE COURT: So you're talking about the last two pages
11 here?

12 MR. SCHWARTZ: Yes. The FS version.

13 THE COURT: Different notes. Does it exclude the two
14 at issue here?

15 MR. SCHWARTZ: I don't believe so but there's more
16 than two at issue here, as you're going to hear. It includes 7
17 of 12 and 8 of 12. It's unsigned and lacks a number.
18 Mr. Alcalde would have no idea who created these documents when
19 unsigned. But the first version --

20 THE COURT: Again, I understand your position. A big
21 fraud that's taken place here. I want to get to that. But I
22 want to brush away what we don't need to get there. Somewhere
23 does this document support your theory of fraud?

24 MR. SCHWARTZ: Yes.

25 THE COURT: But if the notes are in the version you

1 say is correct, if the notes were included that are at issue in
2 this case, then where does that take us?

3 MR. SCHWARTZ: You'll see that there are some others
4 that aren't included in this list that are material to this
5 case, and it would take me a while to explain why, and there
6 are other discrepancies between these two documents. Here's
7 the point for now. You really don't have to resolve this now.
8 But this witness should not be resolving it for you.

9 The question you'll have to ask yourself when Dr. Jacir
10 is testifying is what is he doing in his files, having in his
11 files a signed version of this document when the version the
12 Ministry of Finance file is unsigned and it has different
13 information on it?

14 THE COURT: But you've agreed this witness is not the
15 person to resolve any of these. Let's start with that.

16 In terms of the rest of this case, Mr. Cooper, this is
17 an important document; you'd agree, right?

18 MR. C. COOPER: I agree.

19 THE COURT: And Mr. Alcalde is not the best person to
20 identify this other than say he passed it along?

21 MR. C. COOPER: Exactly.

22 THE COURT: We'll just leave it at that. You may
23 continue.

24 BY MR. C. COOPER:

25 Q. Mr. Alcalde, as you review the materials that you'd been

1 provided, the Ministry of Finance materials and the AG opinion,
2 do you have an understanding as to the significance, if any, of
3 the document dated April 29th, 2003?

4 A. Well, the Minister -- the Ministry of Finance was
5 reviewing a specific tranche of notes, some of which were in
6 Miami, some of which were in Switzerland and sent, as we just
7 went over, two members of the Ministry of Finance staff to look
8 at those notes and identify those notes, render opinions or
9 views about them and the notes that were at issue were
10 identified in the Ministry of Finance report.

11 Q. And in the April 29, 2003 document, from what you read,
12 did the Minister issue any orders? I direct your attention to
13 page 2.

14 A. Yeah. The orders are listed there in the translation to
15 create an administrative file, to certify originals, get
16 legible copies of matters that are relevant, add them to the
17 file, to interview relevant person -- people with knowledge, to
18 comply with the formalities that are required for an
19 investigation, and to notify the Attorney General of the
20 Republic of the investigation.

21 Q. I'm going to send you back to Exhibit 3 now, the
22 Attorney General's October 2003 opinion. We were at page 3 and
23 you were addressing what information you found to be
24 significant in forming your views of the effect of the Attorney
25 General's opinion and ultimately the opinion that you rendered

1 to Skye Ventures. We've kind of tracked down through the
2 paragraph addressing the April 29th, 2003 document that we've
3 just looked at. Could you continue down through there and
4 identify any information that was significant to you as you
5 continued your investigation and formed your opinions?

6 A. Well, you know, let me explain the process that I
7 ultimately used was at some point in time I had the opinion of
8 the Attorney General. Of course I had had that for a while. I
9 had the Ministry of Finance documents and I would go through
10 the Attorney General's opinion and look for documents that were
11 in the Ministry of Finance file as I read the Attorney
12 General's opinion with respect to what been done. And that
13 process of course helped me to make my ultimate informations to
14 Mr. Richards and Skye.

15 Noteworthy here is a rendition the Attorney General was
16 sort of summarizing and pointing out to what was in the
17 Ministry of Finance -- what the Minister of Finance did which
18 if we start after when you mention the April 29, 2003 document
19 that we just talked about, it goes on to say that the Ministry
20 of Finance proceeded to compare documents that the Claimant had
21 submitted, meaning Gruppo Triad, to documents that were in
22 various different offices of the government of Venezuela. And
23 those were listed.

24 Public Credit, Auditing, the Director General of
25 Internal Security legal department and files in the Minister's

1 office, originals of the Official Gazettes published at the
2 time were reviewed. That records and files and court
3 proceedings that were authenticated by Notary Publics were
4 reviewed.

5 Going on to page 4 --

6 Q. Let me stop you. Why was that important to you, if it
7 was?

8 A. Well, it was important because it was important to
9 understand that the Minister of Finance had looked at all these
10 issues and that the Attorney General had looked at all these
11 issues or acknowledged them. It was important to me, I mean --
12 I have to back up.

13 I'm dealing with, as I'm learning, an investigation, at
14 least in what I was learning in conveying to Mr. Richards, that
15 we're dealing with an investigation that was, in essence,
16 requested by the Office of the President of Venezuela and an
17 important member of the General Assembly. That's where I
18 started out from. This is an important and a very serious
19 investigation giving me the assumption that the Minister of
20 Finance took this seriously and that the Attorney General took
21 this seriously. We're dealing with an important and
22 significant amount of money, a billion dollars, acknowledged by
23 the Attorney General in her opinion, acknowledged by the
24 Minister of Finance in his investigation.

25 So within the framework of that understanding, it's

1 important to understand what all they did, who all they checked
2 with, and the importance which they took this investigation
3 because I have a client that is looking to invest in this
4 matter, right, and wants to know if this is a final and binding
5 opinion. So all of these issues are important to understand
6 how important it was to Venezuela.

7 Q. The next page is a reference to an entity it's on the
8 screen now called -- the initials are F-O-G-A-D-E.

9 A. FOGADE, which is an entity that sort of insures banks.

10 Q. What was your understanding as to the significance, if
11 any, of FOGADE to this matter?

12 A. Well, there was a request for their cooperation and to
13 review what Bandagro files they may have had. As you know, the
14 Bandagro bank, from our prior discussions, had required an
15 intervenor basically, had gone into bankruptcy. So an
16 intervenor had been appointed. So it would be logical that the
17 Minister of Finance would look at what files may be there.
18 Then we have the -- it goes on to list that they requested the
19 cooperation of the Central Bank of Venezuela.

20 MR. SCHWARTZ: Excuse me just a second, Your Honor.
21 Mr. Alcalde is now asking and answering the questions. There
22 was just a question about FOGADE. He's on to the Central Bank.

23 THE COURT: Let's leave it there. You can go ahead
24 and phrase the next question.
25

1 BY MR. C. COOPER:

2 Q. Mr. Alcalde, you were addressing the information that
3 from your perspective was significant because it indicates, to
4 paraphrase, the seriousness of the investigation. Are there
5 other aspects to the information on this page, on page 4, that
6 led you to that same conclusion?

7 A. Sure. That the Central Bank had been consulted, that a
8 criminal -- Scientific and Criminal Investigation Corps had
9 been consulted with respect to handwriting and expert analysis
10 of 47 promissory notes that presumably had been issued. This
11 report will discuss that there had been four prior
12 investigations of the Bandagro notes. This part of the prior
13 investigation. I don't know if they considered part of four or
14 not. But this is a prior review of Bandagro notes.

15 So the Ministry of Finance and the Attorney General
16 recognize and list four prior investigations in which the
17 Ministry of Finance, for a variety of other reasons, had
18 rejected claims and had alleged that some of these notes were
19 counterfeit.

20 The reason that was important to me, because as I'm
21 evaluating this opinion in the matrix of everything I've just
22 said, the importance that they found these specific notes valid
23 and different was overwhelmingly significant. Because if they
24 were looking for a reason to deny these notes, they certainly
25 had them. And they didn't. And they made the decision that

1 these notes were legitimate and valid obligations.

2 So it was significant to me, all of these things that
3 they reviewed, including the four prior investigations where
4 they had rejected the notes.

5 MR. C. COOPER: Your Honor, I'm at a good stopping
6 point and I'm mindful of the Court's schedule.

7 THE COURT: We're right up to the noon hour. We'll be
8 in recess for one hour.

9 (A recess was taken at 12:00 p.m.)
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Monday Afternoon Session

February 1, 2016

1:00 p.m.

- - -

THE COURT: And, Mr. Cooper, you may continue.

MR. C. COOPER: Thank you, Your Honor.

BY MR. C. COOPER:

Q. Mr. Alcalde, if you turn back to Exhibit 3, which is the Attorney General's October, 2003, opinion, Mr. Alcalde, and directing your attention to page 5?

A. Just so I can follow you when you say 5, you mean the number in the upper right-hand corner?

Q. Exactly. Do you see a reference on this page to a Bruno -- and it's spelled here Fabini, but I think the parties would agree it's Fabbiani. Do you see a reference there?

A. Yes, in the third paragraph.

Q. Yes. When you were evaluating the Bandagro matter, did you have an understanding as to who this Bruno Fabbiani was?

A. He was a document -- He was an Italian document expert that was my understanding had issued some opinions regarding handwriting analysis and signatures with respect to the signatures that appeared on the promissory notes.

Q. And of what significance was that, if any, as you saw a reference to him in the Attorney General's October, 2003, opinion?

1 A. Well, the Attorney General's opinion discussed the fact
2 that there was evidence in the files, meaning the Ministry of
3 Finance investigation, which, of course, was based on other
4 documents, that the signators to the notes, meaning the three
5 principal individuals of the Bandagro Bank, had denied signing
6 the notes. There was reference in both the Ministry of Finance
7 investigation and the Attorney General's opinion acknowledging
8 those denials.

9 But in addition to that in the files of Notary Publics
10 in Venezuela, at least in one Notary Public, a document had
11 been found, a notarized document, in which the three signators
12 to the Bandagro notes had admitted signing the notes.

13 Then there was the investigation that Bruno Fabbiani had done
14 which included, in my understanding, going to Caracas and
15 looking at documents in Caracas, comparing notes, doing other
16 types of forensic analysis of the paper and those sorts of
17 things, in which he opined that the signatures on the notes
18 were the signatures of the three principals of Bandagro.

19 So the significance was, you know, basically two fold.
20 Number one, that there was an acknowledgement in the
21 investigation that there was an issue about the signatures,
22 that there was an acknowledgement of a denial of the
23 signatures, that there were documents in Venezuela that carried
24 legal weight that acknowledged the contrary, that they had
25 signed notes. And then there was an investigation of Bruno

1 Fabbiani giving his opinion about the genuineness of the
2 signatures and other indicia with respect to the notes.

3 MR. SCHWARTZ: Your Honor, I will move to strike
4 Mr. Alcalde's description of what Fabbiani is alleged to have
5 done and determined. He's not here. This is -- Mr. Alcalde is
6 a conduit for an alleged expert opinion.

7 THE COURT: He's -- This is not substantive evidence
8 as far as I can hear. He's just relaying what's in here,
9 what's passed along to the client. On that basis, it would be
10 -- I will listen to it, but it doesn't go to prove what's
11 asserted.

12 MR. SCHWARTZ: All right, I will try to resist the
13 impulse to object for the remainder of the afternoon session.
14 I just thought I should get one on the record at the beginning.

15 THE COURT: And I will note, we'll probably have some
16 more of this on the way, but it will not be substantive proof
17 of what's being stated here. It's simply what's being
18 transmitted.

19 MR. SCHWARTZ: Your Honor, I hope you can appreciate
20 I'm trying to strike the right balance between making sure my
21 client's rights on this issue are preserved and not making
22 myself --

23 THE COURT: I can assure you I would not be making a
24 finding about what the handwriting expert said based on his
25 testimony. I don't think Mr. Cooper asked me to either. We

1 are on the same page.

2 MR. SCHWARTZ: Thank you.

3 BY MR. C. COOPER:

4 Q. Mr. Alcalde, turning to page 5 and carrying over to page
5 9, there are references to four reports.

6 A. Yeah. I might add that I also met Fabbiani in Italy and
7 talked to him.

8 Q. Okay.

9 A. And I conveyed that to the client as well.

10 MR. SCHWARTZ: I'm going to move to strike. He's
11 asking and answering questions. This is a real trial, not a
12 dialogue.

13 THE COURT: And I don't think that there's any harm
14 here. Let's just move forward, if we could.

15 BY MR. C. COOPER:

16 Q. If we look at the bottom of page 5 and carrying over to
17 page 9 of the Attorney General's October, 2003, opinion, there
18 is a reference to a series of four reports. I think on page 9
19 finally gets to the fourth report. As you considered the
20 Ministry of Finance's materials, and it's in its report, and
21 the Attorney General's opinion, you have had -- you've
22 testified a little bit about four reports. Of what
23 significance were the four reports and the fact that they are
24 addressed in the Attorney General's opinion?

25 A. Well, the significance to me -- and as I conveyed that

1 to Mr. Richards -- was that as we learned about issues with the
2 allegation that there were Bandagro notes floating in the
3 international market that were counterfeit, as we learned that
4 there were allegations -- as I learned that there were
5 allegations against James Pavanelli, okay, as to whether or not
6 he was involved in those prior notes or not, it was very
7 significant that the government of Venezuela was, in essence,
8 aware of these issues. They were noted in the Ministry of
9 Finance investigation, particularly that there had been
10 Bandagro notes that people had attempted to collect on in the
11 past and that the Ministry had rejected as being counterfeit,
12 that many of these allegations and claims that are -- that were
13 being raised that, number one, that Bandagro never issued
14 notes, that these people never signed the notes, all of these
15 types of allegations were well known to the Ministry of
16 Finance, acknowledged in their investigation, communicated to
17 the Attorney General, acknowledged by the Attorney General,
18 written down in her opinion, the reasons therefore, and
19 nevertheless concluded that these notes were different, were
20 genuine, there was no proscription to paying them, and that the
21 claim was valid.

22 So when I was evaluating this for Mr. Richards -- and
23 I go back to what I said at the very beginning, that this was
24 an investigation ordered by the highest levels of the
25 Venezuelan government, that acknowledged all the warts, let's

1 say, that had -- were in existence and everyone knew about it,
2 declared these notes to be valid and an obligation of the
3 Republic, under a procedure that was tasked to determine if it
4 was final and binding.

5 So it was very significant for those reasons.

6 Q. If you would turn to page 12 of the opinion.

7 In the Attorney General's October, 2003, opinion, did the
8 Attorney General indicate in any way whether -- anything about
9 the significance in the Attorney General's view of the matter?

10 A. Yes. The Attorney General acknowledged that this was a
11 matter of great importance. And if we look at the English
12 translation --

13 Q. Where are you on page 12, please?

14 A. The first full paragraph, that it is evident that the
15 documents related to this case deemed as of great importance
16 due to their amount, the circumstances that surrounds
17 securities claims -- They are addressing the issue that I just
18 mentioned -- and because the nation's patrimony is involved --
19 which is what her duty is to defend and represent -- are
20 dispersed in various files -- So, in other words, in my
21 opinion, reading this, in all the circumstances that I have
22 relayed, no doubt in my mind that everyone understood all the
23 facts and that this was a very, very serious issue they were
24 paying attention to.

25 Q. Did the Attorney General in her October, 2003, opinion,

1 indicate what she -- according to her opinion, what she
2 understood the Ministry's conclusion to be, the Ministry of
3 Finance conclusion to be? I direct your attention to page 15.

4 A. So on page -- Starting really on page 14, she's starts
5 addressing the representations of the legal department of the
6 Ministry of Finance. And on page 15 she gets to the
7 conclusion, which she is essentially quoting the conclusion
8 from the Ministry of Finance report. And if we look at the
9 third full paragraph there that's in italics, having reviewed
10 and analyzed, as we have, all of the elements, arguments and
11 evidence appearing in the documents that have been described
12 throughout the present investigation, it appears evident that
13 there is an irregular situation with some of the promissory
14 notes that were subject to the judgment handed but which
15 together create an array of opinion -- Is that what you're
16 referring to?

17 Q. Well, let me direct your attention to the bottom
18 paragraph.

19 A. Yes.

20 Q. Does the Attorney General indicate what she understands
21 the Ministry of Finance's legal department to be concluding?

22 MR. SCHWARTZ: Your Honor, now we're moving into the
23 problem of the leading nature of the questions. And Mr. Cooper
24 has certain parts that he likes. The documents are going to be
25 evidence. He can argue about it in post-trial briefs.

1 THE COURT: Let's go back. The objection is leading.
2 Rephrase the question, if you would.

3 BY MR. C. COOPER:

4 Q. Mr. Alcalde, does the Attorney General indicate in her
5 opinion at any point --

6 A. Yes.

7 Q. -- what she understands the Ministry of Finance's
8 conclusions to be?

9 A. Yes. So the last paragraph on page no. 15 in the upper
10 right-hand corner, starts out with the fact that the existence
11 of the notes have been established in Miami and in Switzerland.
12 And the conclusion is, she quotes, this Legal Department
13 concludes that the claimants of the promissory notes submitted
14 to the present inquiry have the legitimate right to have them
15 processed in order to cash them in accordance with the rules
16 and procedures governing this activity.

17 So she's quoting the Ministry of Finance's
18 recommendation.

19 Q. Turn your attention to the next page. Does the Attorney
20 General indicate in her report what she understands her role to
21 be in this matter?

22 A. Yes. She understands her role to be as -- that the
23 investigation has been submitted to her by the Ministry of
24 Finance in accordance with the provisions of the Organic Law of
25 the Attorney General's office as it is that agency, meaning her

1 agency, that has the authority to provide a definite opinion on
2 the mandatory compliance for which reason these proceedings
3 must be sent to it, meaning the Attorney General, for the
4 pertinent legal purposes.

5 Q. Beginning on page 16 there is a section titled The
6 Opinion of Attorney General's Office. I'm not going to go
7 through each point, but did you review this section of the
8 Attorney General's Office's opinion understanding as to what,
9 if anything, the Attorney General might have found significant?

10 A. I mean I read the opinion of the Attorney General a
11 number of times. So I have already talked about a lot of the
12 things that the attorney -- that I thought the Attorney General
13 found significant that were significant to me.

14 But I don't know where it is right now, but
15 significant to me were the fact that the Attorney General ruled
16 that there was no proscription, for example, no lapse, no
17 statute of limitations issue, no legal impediment under the
18 laws of Venezuela to have these notes paid and that she -- you
19 know, she concluded that it was a valid claim.

20 Q. On the bottom of page 19, there is a reference to
21 something called a Judicial Inspection. Do you see where I'm
22 referring to under the paragraph numbered 12?

23 A. Yes.

24 Q. During the time that you were evaluating the Attorney
25 General's October, 2003, opinion and providing information to

1 Skye, did you have an understanding as to what a Judicial
2 Inspection was under Venezuelan law?

3 A. That a judge and some other functionaries would have
4 physically inspected a document.

5 Q. The reference to the Judicial Inspection at the bottom
6 of page 19, carrying over to page 20, during the course of your
7 assessment of the Attorney General's October, 2003, opinion,
8 did you -- were you able to obtain a copy of any of the
9 documents that were referred to as a Judicial Inspection --
10 that were referred to in the Attorney General's opinion?

11 A. Well, I obtained a copy of the Ministry of Finance
12 investigation and whatever documents were therein. From time
13 to time other people would provide me documents or I would
14 obtain documents. But I don't know if you are referring to a
15 specific document. I mean I obtained a lot of documents.

16 Q. Okay. If we look at the text at the bottom of page 19
17 and carrying over to page 20, of what significance, if any, was
18 that to you of the description of the Judicial Inspection that
19 was recounted in the Attorney General's October, 2003, opinion
20 of what significance of any opinion was that to you as you
21 decided what advice to give to Skye?

22 A. Well, I mean I -- Let me be clear. You know, I didn't
23 pick and choose documents. Okay? That the Attorney General of
24 Venezuela necessarily -- I mean I didn't go around picking and
25 choosing what I thought was important in what the Attorney

1 General and the Ministry of Finance thought was important,
2 okay? You know, I studied very closely what they looked at,
3 okay, what they reviewed, what they discussed good and bad, and
4 studied their conclusions within the legal framework of
5 Venezuela, right? And their conclusion was that the notes --
6 that it was a valid claim, all right? So I didn't -- I didn't
7 particularly necessarily think that this document was more
8 important than some other document, okay, because that was
9 their job to do. That was their job to decide what was
10 important or not.

11 With respect to this particular document, you know,
12 which -- They're deciding that the document, you know, is in
13 existence someplace. But you'll have to give me the actual
14 document.

15 Q. Let me -- Actually, let me move to this. You have
16 mentioned several times now that your focus was on the
17 conclusion of the Attorney General. Did you -- In her October,
18 2003, opinion, does the Attorney General reach a conclusion?

19 A. Yes.

20 Q. And where does she reach that conclusion? Can you
21 direct the Court to that?

22 A. If we look at the English translation, it starts on page
23 37, which is SKYE5634, the last paragraph. It accepts the --
24 I'll read, It accepts the evaluation and opinion maintained by
25 the Finance Ministry's legal department in the terms set forth

1 above and, in this regard, the Attorney General pronounces
2 itself in favor of the admissibility of the aforesaid claim
3 filed.

4 And, again, I raised my objection to that as I stated
5 before.

6 The present opinion addresses only the admissibility
7 of the claim and does not encompass an estimate of the amounts
8 and sums claimed, the calculation of which falls to the
9 respective Ministry, nor the form or methods of payment.

10 Then she goes on saying, all other claims and
11 compensation sought by individuals in these administrative
12 proceedings which gave rise to the claim including but not
13 limited to the payment of any type of interest claimed or
14 damages adjustments for inflation, etcetera, are expressly
15 dismissed.

16 So that's her conclusion.

17 Q. Were you ever provided with a certified copy of the
18 Attorney General's October, 2003, opinion?

19 A. Yes.

20 MR. SCHWARTZ: I'm going to object to the form of that
21 question, if I can, Your Honor. I don't know if he means
22 whether if a copy was, an official certified copy, was given to
23 Mr. Alcalde or a copy of a certified copy.

24 THE COURT: I want you to clear that up.

25 MR. C. COOPER: Let me clear it up with a document, if

1 I could, Your Honor.

2 BY MR. C. COOPER:

3 Q. If you turn to Exhibit 133 in Binder 6, please.

4 Mr. Alcalde, do you have Exhibit 133?

5 A. Yes.

6 Q. Do you recognize this document?

7 A. Well, the first page is an e-mail that I sent to Dave
8 Richards on May 17, 2004. With this is a copy of the opinion
9 of October 3, 2003, of the Attorney General of Venezuela with a
10 notarization in front of it.

11 Q. The e-mail on the first page indicates under the subject
12 the line forward Dictamen.

13 A. Yes.

14 Q. What does dicta mean?

15 A. That's the -- In Spanish, the Spanish opinion says Dicta
16 Fiscal General. We have been referring to it as the Opinion of
17 the Attorney General.

18 Q. And then it indicates there is an attachment, it says
19 3-10-2003, which in the western world would indicate March 10,
20 2003. Can you explain that date, please?

21 A. October 3, 2003.

22 Q. Okay. So in Venezuela, are the months and dates
23 transposed?

24 A. Yes.

25 Q. And then does this e-mail indicate where you obtained or

1 received this attachment?

2 A. Well, I don't know -- Well, it looks like -- I was going
3 to guess Jacir, but it is Jacir. So I think Gerardo Jacir may
4 be one of his sons.

5 Q. And does the e-mail itself below have your signature?

6 A. Yes, it does.

7 Q. Does the attachment indicate whether or not this copy of
8 the Attorney General's October, 2003, opinion has been
9 certified by anyone?

10 MR. SCHWARTZ: Objection, Your Honor. Mr. Alcalde is
11 just not competent to answer that question.

12 THE COURT: Well, let's get to his knowledge first.
13 But at this point, good point.

14 MR. SCHWARTZ: I don't want to make a big deal out of
15 this. If the question is whether Jacir sent him a copy of this
16 document with what appears to be a certification on it, I am
17 not going to make a problem for you. He couldn't know what
18 somebody did in Venezuela --

19 THE COURT: I don't know. Maybe he does. Let's ask
20 him, Mr. Cooper.

21 MR. C. COOPER: I am simply trying to ask what
22 Mr. Schwartz indicated.

23 BY MR. C. COOPER:

24 Q. Did the copy you received indicate to you whether it has
25 been certified or not?

1 A. What this document states is that Gerardo Jacir, okay,
2 with the following document that is found in a Public Notary,
3 okay? And the Notary, it is noted up in the upper right-hand
4 corner, okay, is submitting a document -- is -- has a certified
5 copy of this document.

6 Q. Then if we turn to the page marked SKYE6068?

7 A. 6068?

8 Q. In the lower right-hand corner.

9 A. Okay. My documents read like 6027, 6028, 6029.

10 Q. I'm sorry, what's the last page of the document in front
11 of you?

12 A. 67.

13 Q. Okay. There may be a copying error. That's the last
14 page you have, 67?

15 A. Yeah, SKYE67.

16 MR. C. COOPER: Let me see if we can fix this copying
17 error. May I ask counsel if they have a full set as well? I
18 want to make sure that --

19 THE COURT: Sure.

20 MR. SCHWARTZ: Mine looks like this, it starts at
21 6026, and it goes to -- Mr. Alcalde, 67. But there are a few
22 documents in here.

23 MR. C. COOPER: I don't believe his went to 67.

24 MR. SCHWARTZ: I am not sure he enunciated it clearly.
25 It might be the same thing that you are saying.

1 Mr. Alcalde, 6070. Is that the last page that you have?

2 THE WITNESS: The last page that I have is 6070.

3 MR. SCHWARTZ: I don't know that Mr. Cooper heard
4 what you said.

5 BY MR. C. COOPER:

6 Q. I didn't hear what you said the last time. Could you go
7 in two pages from the end, or three, to 6068?

8 A. Yes. 6068.

9 Q. Yes. When you received this copy, did you have an
10 understanding as to what this page represented?

11 A. Yes, a certification by Marisol Plaza Irigoyen, the
12 Attorney General, that this was a copy of her opinion.

13 Q. Did this page indicate to you when the certification
14 occurred?

15 MR. SCHWARTZ: Objection. Again, if the only point is
16 that he received a copy of this from Venezuela, no problem. If
17 he is going to be trying to testify as to the underlying
18 documents he didn't receive, I have a problem.

19 THE COURT: Well, you know, I am not sure what the
20 certification does. And that might help. But in terms of what
21 the witness's knowledge is, that would help also.

22 THE WITNESS: Well --

23 THE COURT: Let Mr. Cooper frame the question.

24 BY MR. C. COOPER:

25 Q. That's what I am asking. What is your knowledge as to

1 when this certification took place?

2 A. On --

3 MR. SCHWARTZ: Objection. No foundation.

4 THE COURT: We're back. First of all, I distinctly
5 remember in the course of the motions there is something about
6 notarization that you both referred to. If the witness can
7 clear that up, that would be helpful to me as the trier of
8 fact. In other words, we have Notaries here, but that doesn't
9 make it a public document. If there is something about
10 notarization in Venezuela that was different.

11 MR. C. COOPER: Thank you, Your Honor.

12 BY MR. C. COOPER:

13 Q. Mr. Alcalde, before we get to that page then, during the
14 course of your evaluation of the AG opinion for Skye, did you
15 gain any understanding as to the role or function of Notary
16 Publics in Venezuela?

17 A. Yes.

18 Q. What did you understand the role of the Notary Public in
19 Venezuela?

20 A. I also have the knowledge of Notary Public because of my
21 work as an attorney that does work in Latin America as well.

22 Q. Perhaps can you compare it to the Notary Public in the
23 United States.

24 A. Notary Publics in Venezuela and many other countries
25 serve as a -- They are not just a Notary that stamps like

1 something here. They also serve as a depository sometimes of
2 documents. Okay? In this particular case, this document
3 appears -- and it's a copy, I don't have an original -- but it
4 appears to have been notarized by Marisol Plaza, okay? But the
5 significance to me of the document was the date of 17 November
6 2003.

7 Q. Why was that significant to you?

8 A. Well, it was significant to me because in my
9 investigation of the Bandagro matter, prior to the purchase of
10 the notes, I, of course, read newspaper articles of what was
11 occurring in Venezuela with respect to the opinion of the
12 Attorney General of October 3, 2003. And I had become aware
13 through my research, not just in reading but also traveling to
14 Caracas, that, of course, her opinion had created quite an
15 uproar in Venezuela. Major newspapers at the time as well as
16 minor newspapers, many of them one could characterize as not
17 friendly to the government, were heavily criticizing the
18 October, 2003, opinion. The Ministry of Finance had been
19 reported as supposedly refusing to pay and perhaps taking some
20 steps to not pay. And so it was significant to me that not
21 just that in November of 2013, the Attorney General was
22 standing by her opinion --

23 Q. Did you say 2013?

24 A. 2003, I am sorry. And all throughout the time that I
25 was traveling to Caracas and prior to the notes being purchased

1 and prior to the demand being made and prior to the litigation
2 being filed, the Attorney General, to my knowledge, publicly
3 defended her October opinion.

4 MR. SCHWARTZ: Objection. Motion to strike that, the
5 last segment of the answer, to the extent that it went beyond
6 the date that appears in the document and is not responsive to
7 the question.

8 THE COURT: Well, again, he's relaying what he read
9 in the newspapers, first of all. So I will take it for that
10 and nothing more. But also what this document then winds up
11 being -- I still want to get us back to the notarization
12 process.

13 BY MR. C. COOPER:

14 Q. So you have explained why the date was important. You
15 have explained a little bit about the Notary Public process.
16 Did you develop an understanding what legal significance, if
17 any, that a document filed with a Notary Public took on in
18 Venezuela?

19 A. Yes. A document filed in a public office carries legal
20 significance as -- you know, for the truth of the matter
21 contained therein. And it has to be, my understanding was that
22 one had to go through a formal process to remove or strike the
23 document if one were claiming that there was some falsity about
24 it.

25 Those same sort of issues were addressed in the

1 Attorney General opinion when I testified earlier that there
2 had been -- there was evidence that the signators claimed that
3 they had not signed the Bandagro notes but then there were
4 documents in a Public Notary where they acknowledged those
5 signatures in front of a notary. I mean it's discussed in the
6 Attorney General's opinion that that carries weight.

7 MR. C. COOPER: If I may address the bench directly, I
8 want to make sure we answered the Court's question.

9 THE COURT: I have got it. Thank you.

10 BY MR. C. COOPER:

11 Q. Mr. Alcalde, you have testified about the Attorney
12 General's October, 2003, opinion and its review and the review
13 and the conclusions that were reached regarding the Ministry of
14 Finance report. During the course of your evaluation of the
15 Bandagro matter, did you obtain a copy of the Ministry of
16 Finance report, the Ministry of Finance report that's
17 referenced in the Attorney General's opinion?

18 A. Yes.

19 Q. Do you recall approximately when you obtained a copy of
20 the Ministry of Finance's report?

21 A. I think it was -- I don't know if it was -- I don't
22 think it was in April when I first met Jacir. I think it was
23 after that. But I don't recall the exact date.

24 Q. Did you review the Ministry of Finance report?

25 A. I reviewed the Ministry of Finance report in conjunction

1 -- At one point in time I went through the Attorney General's
2 opinion. When a reference was made to something, I would try
3 to find it.

4 MR. C. COOPER: If we could turn to Exhibit 6, which I
5 believe is in Binder 2.

6 THE DEPUTY CLERK: Exhibit 6.

7 BY MR. C. COOPER:

8 Q. Mr. Alcalde, do you have Exhibit 6?

9 A. Yes.

10 Q. Do you recognize Plaintiff's Exhibit 6?

11 A. It's a -- purports to be the final report of the
12 Ministry of Finance regarding these specific Bandagro notes.

13 Q. When you reviewed the Ministry of Finance report, did
14 the report you reviewed have any attachments? Was it
15 accompanied by any documents?

16 A. Yes, there were a lot of documents.

17 MR. C. COOPER: If we could provide the witness with
18 Exhibit 6A? It's in the same binder.

19 THE DEPUTY CLERK: 6A.

20 BY MR. C. COOPER:

21 Q. Mr. Alcalde, do you recognize this document?

22 A. These are the annexes to the Ministry of Finance report.

23 MR. C. COOPER: And if you can provide the witness
24 with Exhibit 6B, please?

25 THE DEPUTY CLERK: 6B.

1 BY MR. C. COOPER:

2 Q. Do you recognize Exhibit 6B?

3 A. A second set of annexes to the Ministry of Finance
4 report.

5 Q. When you say first set of annexes and second set of
6 annexes, just so the record is clear, what does that mean?

7 A. The first one is titled the first set of annexes. And
8 it says from A to U and then -- that's 6A. And then behind
9 that are a number of documents that constitute this first set
10 of exhibits.

11 6B is titled the second set of annexes. And it, you
12 know, goes from A to -- it says here from A to O, but it
13 basically contains several other -- a number of other
14 documents.

15 Q. Let me turn to the report itself so let's go back to
16 Exhibit 6, if we could.

17 And I want to take you back to when you reviewed the
18 Ministry of Finance report as you were assessing the Bandagro
19 matter on behalf of Skye and deciding what opinions to provide
20 Skye, if we look at the -- starting with the first page, what,
21 if anything, was significant about the text on the first page
22 as it related to your review of the Bandagro matter?

23 A. I'm not sure that I -- I just want to make sure I'm
24 clear here. I'm not sure that I reviewed the English
25 translation. I would not have had -- I am pretty sure what I

1 initially reviewed would have been a copy of the Spanish. All
2 right? So this appears to be here on the first page of 6A --
3 well, a translation, let's say. Okay?

4 Well, so --

5 Q. What is the date of the report?

6 A. The date of the report is August 8, 2003.

7 Q. Do you see above the date a reference to a file number?

8 A. Yes.

9 Q. Do you know how that file number -- whether that file
10 number matches the file number that was referenced in the --

11 A. I would have to look at the letter that we identified,
12 which was the opening of the administrative procedure. I don't
13 have it memorized. But to the extent that that number matches
14 with the exhibit of the administrative procedure that was
15 opened.

16 MR. SCHWARTZ: Just one second. There appears to be a
17 potential discrepancy in the exhibit that I have in my binder
18 is not quite the same one on the screen. Are we looking at the
19 one that we're looking at the screen and the one under mine?

20 THE COURT: Where is the discrepancy, what part?

21 MR. SCHWARTZ: I have a Plaintiff's Exhibit 6 that is
22 not quite the same document as Plaintiff's Exhibit 6.

23 THE COURT: Well, where?

24 MR. SCHWARTZ: On the first page.

25 THE COURT: What part?

1 MR. SCHWARTZ: I'm being told by Ms. Rodriguez the
2 plaintiffs have may have added a translation which they didn't
3 get into the binders here.

4 MR. C. COOPER: I have the Spanish. You don't have
5 the English translation on top.

6 MR. SCHWARTZ: That appears to be the case.

7 MR. C. COOPER: I will give you mine.

8 MR. SCHWARTZ: Do you have the English on top of the
9 Spanish or the second.

10 THE COURT: I'm looking at Plaintiff's Exhibit 6.
11 It's exactly as the one on the screen.

12 MR. SCHWARTZ: I am the only one that's different. So
13 Mr. Cooper has given me his copy so I'm all set.

14 THE COURT: You may continue.

15 BY MR. C. COOPER:

16 Q. Mr. Alcalde, how was this report titled?

17 A. Well, the English translation titles it final report on
18 the results of the internal administrative investigation
19 related to promissory notes Caroni Code series IIC-290,
20 ICC-322, allegedly issued by the extinct Banco de Desarrollo
21 Agropecuario, Bandagro.

22 Q. Does the first page indicate who the notes are being
23 claimed by?

24 A. Yes, down at the bottom, claimed by Lawyer Miguel Jacir
25 in representation of Gruppo Triad-FCC.

1 Q. I'm going to move to page 6 of this, which has a number
2 in the lower right-hand corner, VZ15639.

3 A. Okay.

4 Q. As you reviewed the report, did you try to develop an
5 understanding of the methodology, if any, that the Ministry of
6 Finance had undertaken to conduct its investigation?

7 A. I would say that, yes, in the sense that it's, you know,
8 described -- the methodology used was described both in the
9 Attorney General opinion and as described here. And I spoke to
10 Mr. Guzman as well.

11 Q. In the first paragraph under the section Presentation of
12 the Case, there is a reference to determining the truthfulness
13 of some security. Do you see the English translation there?

14 A. Yes.

15 Q. What did you understand that to mean?

16 A. I understood it to mean that they were pursuing an
17 investigation as had been requested by the claimant as had been
18 requested by Luis Alvaray to determine if these Bandagro notes
19 were genuine and if they were a legitimate obligation to the
20 Republic of Venezuela.

21 Q. If you would turn to page 9?

22 A. What's the Bates number.

23 Q. VZ15642.

24 A. Okay.

25 Q. I'm going to just note that -- or ask you, there's

1 references on page 9 near the top that something was attached
2 and identified as D and something attached and identified as E.
3 Do you know if those are references to the annexes that you
4 have identified?

5 A. Yes.

6 Q. If you would turn to page 11, please.

7 A. Is that 44?

8 Q. Let's start at page 10 of VZ. Do you see the section
9 titled Field Research?

10 A. Yes.

11 Q. Now let's go to page 11. Within this section entitled
12 Field Research, there's a subparagraph 3.3. Do you see where
13 I'm referring?

14 A. Yes.

15 Q. In this paragraph it indicates that Hepsie Hurtado, who
16 you have already addressed, together with Ludmila Soto traveled
17 to Barquisimeto to interview Elbano Fontana Nieves. Did you
18 have an understanding while you were evaluating the Attorney
19 General's opinion who Elbano Fontana Nieves was?

20 A. Yes, he was one of the principals of the Bandagro Bank.

21 Q. Did you have an understanding what, if any, relationship
22 he had to the notes under investigation?

23 A. A signator.

24 Q. Of what significance, if any, was it to you that
25 according to the Ministry of Finance report under Field

1 Research, the Ministry had sent some individuals to go
2 interview Mr. Fontana?

3 A. That the significance was that it appeared they were
4 doing good investigative techniques.

5 Q. If you would turn to the very next page, page 12.
6 There's a heading titled Analysis of the First Report. What do
7 you understand that to be?

8 A. I am sorry, you will have to direct me by Bates number.

9 Q. VZ15645.

10 A. What section now?

11 Q. There's a heading that says Analysis of the First
12 Report. Did you have an understanding of what was meant by the
13 first report?

14 A. I am assuming we're talking about one of those four
15 reports that had rejected the Bandagro notes.

16 Q. During the course of your evaluation of the Bandagro
17 matter, did you review the four reports?

18 A. I would not have reviewed four reports to the extent
19 that those documents were not contained in the Ministry of
20 Finance documents. I don't know that I independently obtained
21 the four reports.

22 Q. Did you see any need to try to independently obtain
23 them?

24 A. No.

25 Q. Why not?

1 A. Because I wasn't reinvestigating what the Ministry of
2 Finance had done or what the Attorney General had done. They
3 had done their investigation. My job was to decide to the best
4 of the ability that we could with my understanding and my
5 research and the experts that I hired whether the opinion of
6 the Attorney General of Venezuela was final and binding. I
7 wasn't reinvestigating their investigation or redoing their
8 investigation.

9 Obviously, I wanted to understand it because I wanted
10 to understand how serious this matter was and what they had
11 done, but I wasn't there to reinvestigate what they had
12 investigated.

13 Q. After about five-and-a-half or six pages, if you get to
14 VZ15650, there's now a section entitled Analysis of the Second
15 Report. Let me know when you're there.

16 A. Yes.

17 Q. If this -- In the initial language, it refers to a
18 report by Marta Isabel Gomis Amendola. During the course of
19 your evaluation of the Bandagro matter, did you gain any
20 understanding of who this person was?

21 A. My understanding was that she had done a prior
22 investigation and may have -- I think she was still perhaps
23 part of the Ministry of Finance in the early 2000s when this
24 additional -- when the report we're talking about came into
25 being.

1 Q. And still within this Analysis of the Second Report, if
2 you would turn to page VZ15653, which is page 20, in the middle
3 of this page you will see a reference to an analysis of
4 authenticated documents. Do you have see that?

5 A. Uh-huh.

6 Q. And there's a bold section that refers to the fact that
7 an authenticated document, that is a public document that has
8 legal consequence, that such signature cannot be annulled by
9 unknowing it. What did you understand it to mean?

10 A. What I testified to earlier, that one cannot simply,
11 let's say, contradict the document that has been authenticated
12 and, you know, filed. That one has to go through a specific
13 process to strike it.

14 Q. Was that ever a topic of conversation between you and
15 Mr. Jacir?

16 A. I think that the question -- It was of interest to me
17 because the -- There were some things about this Venezuelan law
18 that are dissimilar to our American system where, you know, one
19 could disavow a document that has been notarized. But since we
20 don't have this particular depository, let's say, of a Public
21 Notary or something like that, it was of interest to me. But
22 it's it's kind of akin to a, let's say, more of an official
23 document or birth record or something that -- a document that
24 is in a public office, right, that makes a statement about a
25 fact in the U.S.

1 And, of course, denying him that, that doesn't mean
2 one can't deny it, and it may be a question of weight in
3 denying it, but in Venezuela it seemed that this was more than
4 just a question of weight, that you really just couldn't deny
5 it without going through a specific process of actually
6 striking it because the document itself despite a verbal
7 denial, let's say, or some other denial, that document had an
8 independent legal weight.

9 MR. SCHWARTZ: Objection, move to strike, Your Honor.
10 The question was whether he discussed this document with
11 Mr. Jacir.

12 THE WITNESS: I'm sorry, yes, I discussed it.

13 THE COURT: One moment. There's an objection. You're
14 the witness, Mr. Alcalde.

15 MR. SCHWARTZ: The answer went off on some excursion
16 about Mr. Alcalde's understanding of notarization regimes
17 comparatively in Venezuela and the United States.

18 THE COURT: Well, again, we are going to get
19 testimony from this I assume from your expert, right?

20 MR. SCHWARTZ: It's certainly not a subject a United
21 States lawyer should be opining about.

22 THE COURT: Well, who has been dealing with
23 Venezuelan law. But we have two people you have each selected,
24 and that will be the primary source, if not the exclusive
25 source, of Venezuelan law that I will take. At this point

1 we're still in the area about what was known by the client.

2 The objection is noted, but you may continue, Mr. Cooper.

3 THE WITNESS: Yes, we -- I did discuss it with
4 Mr. Jacir.

5 BY MR. C. COOPER:

6 Q. Did you try to develop an understanding of the legal
7 significance of publicly filed documents and how they can be
8 overcome?

9 A. Yes.

10 MR. SCHWARTZ: Objection. We have been over this
11 twice.

12 MR. C. COOPER: Well, I was trying to correct what
13 Mr. Schwartz's -- That's fine.

14 THE COURT: I think we are getting bogged down, to be
15 honest.

16 THE WITNESS: Yes, and I discussed, you know, lost in
17 this is the fact that Mr. Richards is a lawyer. Okay? So
18 Mr. Richards and I, you know, would have these sort of
19 discussions as well because, you know, he's also a lawyer. And
20 when these issues came up about contradictions, let's say, you
21 know, we had these discussions as well.

22 BY MR. C. COOPER:

23 Q. Can you turn to page VZ15662, which is page 29 of the
24 exhibit. There's a little bit of a heading in the middle of
25 this Announcement to the Public Opinion, and then a recitation

1 of a notice, a Public Notice.

2 During the course of your evaluation of the Bandagro
3 matter, did you receive any information about any Public
4 Notices that had been filed concerning Bandagro ICC promissory
5 notes?

6 A. Yes.

7 Q. What did you learn?

8 A. I learned that the -- in addition to the four
9 investigations that had rejected the prior claims, that the
10 government of Venezuela, specifically the Ministry of Finance,
11 had issued by public announcements, sometimes posted on their
12 website and also, perhaps, issued them to international banks,
13 about the fact that there were counterfeit Bandagro notes in
14 the international markets.

15 Q. Was that of concern to you?

16 A. It would have been a concern to me had the Attorney
17 General not taken note of all of these and the Ministry of
18 Finance not taken note of all of this and issued an opinion
19 deciding that these notes were different and that these notes
20 were valid and had to be paid.

21 Q. Turn to page VZ15656 on page 33 of the Ministry's
22 report. You will see at the bottom the heading Analysis of the
23 Third Report. Do you see that?

24 A. Yes.

25 Q. If you would turn to the very next page, stamped

1 VZ15667, there's some -- there's a paragraph next to a number
2 2.

3 A. Yes.

4 Q. That indicates the existence of a public document where
5 citizens Waldemar Cordero Vale, Elbano Fontana Nieves and
6 Pascual Puigbo Morales appeared declaring that they were the
7 authors of the promissory notes and that their signatures were
8 those set on such instruments.

9 Of what significance, if any, was this to you as you
10 read the report?

11 A. It was significant to me because this was noted in the
12 Ministry of Finance investigation and in the Attorney General
13 as part of the evidence that they -- both of those ministries
14 considered in light of the fact that there was other evidence
15 where the signatories had denied signing the notes.

16 Q. Can you turn to the page marked VZ15672, please?
17 There's a paragraph J near the top of the page.

18 A. Yes.

19 Q. And it refers to a graphotechnical assessment. What is
20 a graphotechnical assessment?

21 A. A forensics analysis of, in this case, documents.

22 Q. This paragraph indicates that a graphotechnical
23 assessment was paid to 47 alleged promissory notes in the
24 session apparently made in Geneva, Switzerland, and determined
25 that such promissory notes were not genuine. When you read

1 that in the Ministry of Finance's report, did that cause you
2 any concern?

3 A. It did not -- Well, it did not cause me concern. What
4 it did was gave me more faith and confidence in the decision of
5 the Attorney General and the Ministry of Finance.

6 Q. If you would turn to page VZ15676, please? There's a
7 title Other Elements Arising From Our Investigation. What do
8 you understand this section to represent?

9 A. Well, this -- It represents -- The investigation, in my
10 understanding, had several phases. Number one, it had a phase
11 that we might say a review of the documents, a review of the
12 documents that were found in a variety of different public
13 offices, a review of the documents submitted by the claimants,
14 a review of the notes themselves, a review of the prior
15 investigations. And so other elements, as was pointed out
16 earlier, there were interviews that were conducted. This is
17 part of -- this is essentially the history of some of the
18 players, Cordero, Jacir, their sort of involvement in this.

19 MR. SCHWARTZ: Excuse me for a second. Your Honor,
20 that mis-characterizes the prior testimony in the report, that
21 there were not interviews, plural --

22 THE COURT: I am sorry, I'm not hearing you too well.

23 MR. SCHWARTZ: I am sorry. I am sure it was
24 unintentional, but where Mr. Alcalde makes reference to
25 interviews plural, it's both inconsistent with his prior

1 testimony and with the report itself. So to the extent he's
2 being permitted now to be a summarizer of what is documented,
3 at a minimum he's going to have to be accurate in doing so.

4 THE COURT: You may wish to readdress.

5 BY MR. C. COOPER:

6 Q. Mr. Alcalde, you saw reference in the Ministry's report
7 to field research?

8 A. Yes.

9 Q. What did you understand that field research to be?

10 A. Well, there was an interview of Fontana. We discussed
11 that. There were trips to Switzerland and Miami. I'm assuming
12 -- perhaps I'm wrong -- but I'm assuming that there were
13 discussions with people at banks that said, are there notes
14 here? Where are the notes? Can you show us the notes? Can
15 you produce the notes? If I am wrong on that assumption,
16 perhaps things happened in a way that I don't understand. But
17 assuming that was a logical assumption, there would have been
18 interviews to identify the notes physically and find them.

19 When I read sections of the Attorney General's
20 opinion, notes were -- it was noted in there that there were
21 requests made of FOGADE, that there were requests made of
22 criminal corps. There were all kinds of requests made of other
23 ministries.

24 If I am incorrect in my assumption that people would
25 have been interviewed and showed up, shows us documents and

1 show us what there were, I stand corrected. But that's what I
2 meant.

3 MR. SCHWARTZ: I'm going to move to strike the
4 conjecture. He can't be making assumptions about what's --

5 THE COURT: I am going to sustain the objection.

6 MR. SCHWARTZ: Thank you.

7 THE COURT: Rephrase the next question, if you would,
8 please.

9 BY MR. C. COOPER:

10 Q. Mr. Alcalde, could you turn to VZ15682, please? There's
11 a section titled Opinion. Do you see that?

12 A. Yes.

13 Q. All right. If you turn to the next page, the very last
14 page. Did you, as you assessed the Bandagro matter on behalf
15 of Skye, did you read the Ministry's opinion?

16 A. Yes.

17 Q. What did you take away from it?

18 A. Well, this was essentially the opinion that we discussed
19 earlier that was contained within the opinion of the Attorney
20 General where the Attorney General is relaying what the
21 recommendation of the Ministry of Finance was and that it needs
22 to go to the Attorney General for a final and binding decision
23 because this is the office that is empowered, meaning the AG.

24 Q. Where does it say that in the Ministry of Finance's
25 conclusions?

1 A. It says, if we look at page VZ15683, if we start with
2 the paragraph that says, once verified, the existence of the
3 promissory notes claimed in custody of institutions in Miami
4 and Switzerland.

5 And if we go down, it is here understood that this is
6 the opinion of the Legal Advisory Office of the Ministry of
7 Finance, but that pursuant to provisions of Article 2 of the
8 decree having the force of Organic Law of the Office of the
9 Attorney General, that is the Organic Law of the Attorney
10 General that we discussed earlier, it is that entity which has
11 the competence to give a final opinion of compulsory
12 performance; therefore, these proceedings need to be referred
13 to the corresponding legal purposes.

14 Q. Does the author of this report appear at the bottom of
15 this page?

16 A. Yes, Oscar Guzman.

17 Q. I believe earlier in your testimony you indicated that
18 you met with Mr. Guzman?

19 A. Yes.

20 Q. Why did you meet with him?

21 A. Dr. Jacir had arranged a meeting with Dr. Guzman when I
22 was in Caracas, and so I met with Dr. Guzman to get a -- you
23 know, to get an understanding of a couple of things that were,
24 first of all, who he was, what his background was, what his job
25 had been at the Ministry of Finance, how it was that he was

1 tasked to do this investigation. And it was my understanding
2 at the time that he had been either fired or asked to resign
3 from the Ministry of Finance. So I, of course, was also
4 interested in understanding that.

5 Q. Did you try to obtain from Mr. Guzman any view of -- his
6 views about the effect of the Ministry's report or the Attorney
7 General's opinion?

8 A. Well, he was -- His opinion was that it was final and
9 binding, but I wasn't really --

10 MR. SCHWARTZ: Objection.

11 THE COURT: He's not giving the opinion as final and
12 binding. He's giving a recitation of what Guzman said. That's
13 all I am taking it for and what was ultimately relayed to the
14 client.

15 MR. SCHWARTZ: As long as it's not coming in for a
16 hearsay purpose --

17 THE COURT: It's not.

18 MR. SCHWARTZ: Understood.

19 THE WITNESS: But I didn't hire him as an expert -- I
20 mean I was looking for independent experts on that issue.

21 BY MR. C. COOPER:

22 Q. You testified earlier that you met with Professor Bruno
23 Fabbiani.

24 A. Yes.

25 Q. Where did you met with him?

1 A. Probably in Lake Como. It could have been in Milan.
2 Certainly in Italy. But I don't know if he came to Lake Como
3 when I was on a trip to Lake Como meeting with James Pavanelli.
4 But I met with him in Italy.

5 Q. Okay. And why did you meet with Professor Fabbiani?

6 A. Because he had submitted this report, this forensic
7 report, on the signatures and the notes, and I wanted to get an
8 understanding of who he was and what his background was.

9 Q. Did you obtain a copy of reports from Professor
10 Fabbiani?

11 A. I did. I think it was in Italian, but I did obtain a
12 report, yes.

13 Q. Do you read or speak Italian?

14 A. I don't read Italian. It's amazing you can -- a Spanish
15 speaker and an Italian speaker can communicate. But it's
16 harder to read it than it is to speak it, unlike, for example,
17 it's a lot easier for me to read Portuguese than it is to read
18 Italian, but no, I don't read Italian.

19 Q. Did you gain an understanding of what the report said?

20 A. Yes.

21 Q. How did you do that?

22 A. Well, he and I talked. We also had an individual there
23 that spoke Italian and English.

24 MR. C. COOPER: Could you provide the witness with
25 Exhibits 45, 45 and 46, please, in Binder 4?

1 THE DEPUTY CLERK: 45, 46 and 47.

2 MR. SCHWARTZ: Your Honor, while we're shuffling
3 exhibits, to save time, can I just have a standing objection to
4 the hearsay problem that they're going to present?

5 THE COURT: All right. Again, this is not being
6 offered as substantive evidence, as I understand, Mr. Cooper.

7 MR. C. COOPER: That's fair.

8 THE COURT: All right.

9 BY MR. C. COOPER:

10 Q. Mr. Alcalde, do you have Exhibit 45 in front of you?

11 A. Yes.

12 Q. There's an English translation on top. Behind it is the
13 -- a different document. Do you recognize Exhibit 45?

14 A. Yes. This was part of Fabbiani's study with respect to
15 the signature of Waldemar Cordero.

16 Q. Of what significance, if any, was this to you as you
17 assessed the Bandagro matter?

18 A. Well, it had two significances. The primary
19 significance was that it was a report I understood that had
20 been relied upon by the Ministry of Finance of Venezuela in
21 their investigation, and also relied upon by the Attorney
22 General or at the very least commented on by the Attorney
23 General in her legal review of the investigation.

24 And really meeting with Fabbiani was more of a
25 fleshing out, let's say, of how this report had come about.

1 But the significance, the bottom line significance, was that it
2 was part of the Ministry of Finance investigation and the
3 Attorney General's opinion.

4 Q. Could you turn to Exhibit 46, please? What is 46?

5 A. Again, it's an English translation of a report by
6 Fabbiani.

7 Q. As we looked beyond the English into the next section,
8 there's a -- the front page of the report has the words "Skye
9 Ventures" kind of stamped diagonally across the document. It
10 says SKYE705?

11 A. Yes.

12 Q. What is the significance, if any, of that stamp? Why
13 does that appear on this document?

14 A. Well, I mean I didn't have a Skye Ventures stamp so I'm
15 assuming that Mr. Richards stamped this. But it was provided
16 to us.

17 MR. SCHWARTZ: Again, there shouldn't be any
18 assumptions as to what happened. So I'm going to move to
19 strike.

20 THE COURT: That will be sustained.

21 BY MR. C. COOPER:

22 Q. Was Exhibit 46 the report of Fabbiani provided --

23 A. Yes.

24 Q. -- to you --

25 A. Yes.

1 Q. -- during the course of your assessment of the Bandagro
2 matter?

3 A. Yes.

4 Q. And before Skye purchased 7/12 and 8/12?

5 A. Yes, and I had a copy of that report and so did
6 Mr. Richards.

7 Q. Exhibit 47, please? Do you recognize this document?

8 A. Yes, it was a report that Fabbiani presented in a case
9 that had been filed against Pavanelli regarding the -- that in
10 some way involved the notes.

11 MR. C. COOPER: And if we could provide the witness
12 with Exhibit 48, please?

13 MR. SCHWARTZ: For the record, Your Honor, the same
14 objection to this one as the prior three.

15 THE COURT: Noted, and the same decision. Thank you.

16 BY MR. C. COOPER:

17 Q. During the course of your evaluation of the Bandagro
18 matter, did you provide any information to Professor Fabbiani?

19 I will direct your attention to the page marked
20 SKYE1741.

21 MR. SCHWARTZ: Was there an answer to the prior
22 question? I didn't hear one.

23 THE COURT: Mr. Cooper?

24 MR. C. COOPER: I don't know that he answered the
25 question.

1 THE WITNESS: I don't recall that I provided anything
2 to him.

3 BY MR. C. COOPER:

4 Q. What is Exhibit 48, please?

5 A. It's an analysis, a testing, of the originality of some
6 of the Bandagro securities.

7 Q. You testified a moment ago that you met with James
8 Pavanelli.

9 A. Yes.

10 Q. When did you meet with Mr. Pavanelli?

11 A. In July of 2004.

12 Q. And why did you meet with Mr. Pavanelli?

13 A. In July of 2004, I went to Lake Como to meet James
14 Pavanelli and two other individuals from Venezuela that were
15 involved with the company called Woodstrite, Manfredi and --
16 the other gentleman's name escapes me and their attorney.

17 Q. And why did you travel to Europe to meet with them?

18 A. There was a dispute between the principals of Woodstrite
19 and James Pavanelli regarding an agreement that the principals
20 of Woodstrite had with Pavanelli respecting the -- some notes
21 they felt Pavanelli needed to assign to them.

22 While I was there -- I mean I was there for, I think,
23 several days, and I may have met Mr. Fabbiani at that time as
24 well and, you know, done some other interviews and
25 investigations.

1 Q. During your due diligence, did you obtain any documents
2 other than the documents we have addressed so far, the Attorney
3 General opinion, the Ministry of Finance final reports attached
4 to the Ministry's final report and the newspaper articles, of
5 course?

6 A. I'm sure that I did. I was doing a lot of research.
7 There were people contacting me about matters. But nothing
8 really jumps to mind right now that I may have obtained that I
9 put a great reliance upon.

10 MR. C. COOPER: Could we provide the witness Exhibit
11 61, please, in Binder 5?

12 BY MR. C. COOPER:

13 Q. Mr. Alcalde, do you recognize Exhibit 61?

14 A. Well, I think I've seen the document before, but nothing
15 jumps to mind right now that this was --

16 Q. Okay. You testified earlier about coming across a
17 newspaper article that referred to Atlantic Bank and Bandagro.

18 A. Yes.

19 Q. Did you undertake any steps to get more information
20 about Atlantic Bank or its involvement with Bandagro?

21 A. At one point in time we hired a private investigator,
22 PICA Corporation, to look for more records and maybe to try to
23 find out who had been involved in that transaction.

24 MR. SCHWARTZ: Your Honor --

25 THE COURT: Is there an objection?

1 MR. SCHWARTZ: Yes. There is an objection as to the
2 vagueness of the temporal scope of the question. We have a
3 witness here who was trial counsel for a period of time and
4 necessarily generated some work product. So I think we need a
5 clarification as to when he did this --

6 THE COURT: A date would be helpful.

7 MR. SCHWARTZ: -- whether it was before or after the
8 litigation.

9 THE COURT: All right. Go ahead.

10 BY MR. C. COOPER:

11 Q. Mr. Alcalde, do you recall when this effort was made to
12 obtain more information about Atlantic Bank?

13 A. I am sorry, don't recall that.

14 MR. C. COOPER: Could we give the witness Exhibit 130,
15 please? In Binder 6.

16 BY MR. C. COOPER:

17 Q. Mr. Alcalde, do you have Exhibit 130?

18 A. Yes.

19 Q. Do you recognize Exhibit 130?

20 A. Well, the beginning of it is in -- sorry, it looks like
21 e-mails that David Richards sent to Miguel Jacir in April, on
22 or about April -- well, in April of 2004 regarding our upcoming
23 visit to Caracas.

24 Q. Okay.

25 A. It looks like the first one is. And it looks like the

1 second one is -- Well, there's an April 4 e-mail at the bottom,
2 okay, that seems -- that addresses our trip to Caracas. And
3 then it looks like an e-mail from Jacir after we returned.

4 Q. Let's focus on the e-mail, the April 21, 2004, e-mail.
5 Through this e-mail did Mr. Jacir provide you with any
6 information?

7 A. Yes.

8 MR. SCHWARTZ: Objection, hearsay.

9 THE COURT: Again, it's offered as background for
10 what's passed on to the client?

11 MR. SCHWARTZ: Well, fair enough. But there's a fine
12 line at this point which Mr. Cooper is treading here by loading
13 up the questions with documents that are pervaded by hearsay,
14 this being a conspicuous example.

15 THE COURT: So we're talking specifically about the
16 e-mail from Mr. Jacir again?

17 MR. SCHWARTZ: Well, I'm focused on the e-mail from
18 Mr. Jacir that's dated April 21, 2004.

19 THE COURT: So this has his opinion about somebody's
20 veracity. I will tell you that's not going to weigh into my
21 decision making. I think at this point, as I understand
22 Mr. Cooper's questioning, he is going through with some
23 thoroughness, with what this witness passed on to the client.

24 MR. C. COOPER: Yes, Your Honor.

25 THE COURT: That's the whole point?

1 MR. C. COOPER: That is.

2 THE COURT: So there will be some things in here that
3 you can be assured, particularly the part about this other
4 witness's view of somebody lying, that will be discounted.

5 MR. SCHWARTZ: Thank you, Your Honor.

6 BY MR. C. COOPER:

7 Q. Mr. Alcalde, what I want to focus on is the attachment
8 that was apparently attached to this e-mail. Do you see under
9 the e-mail header where it says Attachments?

10 A. Yes.

11 Q. Do you see the document that follows this e-mail?

12 A. I am sorry, let me get to the Spanish. So I'm looking
13 at the Spanish e-mail now. And attached to the Spanish e-mail
14 is a photostatic copy of a document that appeared in the Notary
15 of Venezuela that Dr. Jacir is sending.

16 MR. SCHWARTZ: My objection applies equally to this
17 portion of the exhibit just so the record is clear.

18 THE COURT: So noted.

19 MR. SCHWARTZ: The foundation of which is on top of
20 the hearsay issue. It's the same weight.

21 BY MR. C. COOPER:

22 Q. Mr. Alcalde, you've testified about trips you took,
23 documents you reviewed, opinions you assessed. Did you provide
24 any opinions to Skye Ventures about the October 3, 2003,
25 Attorney General opinion?

1 A. Yes.

2 Q. When did you provide opinions to Skye about the effect
3 of the October, 2003, opinion?

4 A. Mr. Richards and I worked very closely throughout this
5 entire period of time, and so the whole -- and I'm talking a
6 period of around eight months. And so it was an evolving
7 process. But before Skye Ventures purchased the notes, I took
8 all of the information that we have discussed, my reviews of
9 the law, my discussions with the Venezuelan lawyers that I have
10 identified, the research that we noted, and the newspapers and
11 all of that, and I told Mr. Richards that in my opinion, as
12 well in the opinion of the Venezuelan attorneys that we had
13 consulted, the opinion of the Attorney General of October 3,
14 2003, was final and binding under the law of Venezuela.

15 MR. C. COOPER: If we could provide the witness with
16 Exhibit 85, please, in Binder 6?

17 THE DEPUTY CLERK: 85.

18 BY MR. C. COOPER:

19 Q. Mr. Alcalde, this document is obviously redacted. Do
20 you recognize through the redactions this document?

21 A. It appears to be a memorandum that I prepared for Skye
22 Ventures analyzing the issues related to the opinion of the
23 Attorney General.

24 Q. Through this memorandum the --

25 THE COURT: Wait one moment.

1 MR. SCHWARTZ: I was going to object. It could have
2 been due to the question or to the answer, but -- or the next
3 question, so here we arrive, Your Honor.

4 THE COURT: Let me just set the stage here. You filed
5 a motion in limine that I held in abeyance pending his
6 testimony. How much longer do we have with Mr. Alcalde on
7 direct? Because I am assuming you are going to reargue the
8 motion in limine?

9 MR. SCHWARTZ: Well, I was going to propose is
10 something slightly different which was that I stand up, record
11 the objection, reserve the right to assert it after
12 cross-examination or during cross-examination --

13 THE COURT: That's fine.

14 MR. SCHWARTZ: I expect to develop more of a record
15 than Mr. Cooper will to support my motion --

16 THE COURT: I told you on Friday the motion is out
17 there. And we would determine that after we saw the scope of
18 Mr. Alcalde's testimony, which we are about -- I will give you
19 the opportunity for some cross before we address it.

20 MR. SCHWARTZ: Yes, I just didn't want my silence to
21 be acquiescence or abandonment of that motion.

22 BY MR. C. COOPER:

23 Q. Mr. Alcalde, in this written memorandum, did you provide
24 Skye with your opinion about the effect of the Attorney
25 General's October 3, 2003, opinion?

1 MR. SCHWARTZ: Again, Your Honor, this is not
2 substantive evidence --

3 THE COURT: This is to the knowledge of the client at
4 this point. That's all.

5 MR. SCHWARTZ: Thank you.

6 THE WITNESS: Yes.

7 BY MR. C. COOPER:

8 Q. Directing your attention to the page marked SKYE6924.

9 A. Okay.

10 Q. What opinion did you provide to Skye Ventures about the
11 effect of the Attorney General's October 3, 2003, opinion?

12 A. Well, my -- I mean it's set forth here. Do you want me
13 to read it?

14 Q. Please.

15 THE COURT: Just the date on this is not apparent
16 unless I'm looking right at it and missing it.

17 MR. C. COOPER: It looks like the date has been
18 redacted.

19 BY MR. C. COOPER:

20 Q. Mr. Alcalde, do you recall when you completed this
21 memorandum?

22 A. This memorandum, I don't know exactly when I completed
23 it. It probably went through several drafts.

24 THE COURT: To be honest, you probably had the
25 un-redacted version, right? It's on that. Perhaps you could

1 use that to refresh. Just for the date, nothing else. You
2 have no objection to that, I'm sure.

3 MR. SCHWARTZ: No. In fact I think you ordered the
4 plaintiff to have the un-redacted version in the courtroom.

5 THE COURT: Yes. At least here. It didn't have to be
6 in the courtroom. So if you want to go get it?

7 MR. SCHWARTZ: If you want to leave it in our lunch
8 room, that's fine. Then we can look through it --

9 THE COURT: That's all right. We can get back to the
10 date when the documents are retrieved.

11 BY MR. C. COOPER:

12 Q. So, Mr. Alcalde, what opinion did you provide in this
13 written memorandum? About the effect of the Attorney General's
14 2003 opinion?

15 A. So if we look at the last full paragraph on SKYE6924, it
16 reads, The administrative procedure prescribed by Title 4,
17 Chapter 1 of the -- I will read it in English -- the Organic
18 Law of the Attorney General of the Republic is according to the
19 Venezuela legal experts consulted, the procedure enacted by
20 Venezuela to determine the validity of the claims against its
21 assets. Moreover, once the claim is determined to be a legal
22 obligation of the Republic by the Attorney General, the
23 decision is final and binding upon the Republic. As such, the
24 decision of the Attorney General of Venezuela is a final and
25 binding administrative and executive judgment on the issue of

1 the validity of the Bandagro promissory notes presented by
2 Dr. Jacir and his claim and the fact that said notes are
3 guaranteed by the Republic.

4 Q. Now, Mr. Alcalde, this opinion you indicated is in
5 writing, is in written form. Is this the first or only time
6 that you gave Skye Ventures that opinion?

7 A. No.

8 Q. When did you first give Skye Ventures your opinion that
9 the Attorney General's October 3, 2003, opinion was final and
10 binding?

11 A. Well, as I mentioned, Mr. Richards is an attorney.
12 Mr. Richards and I were working extremely closely during this
13 period of time. Mr. Richards went to Caracas with me.
14 Mr. Richards and I spoke often on this matter. At some point
15 in time it probably became what I was working on the most, if
16 not sometimes the only thing that I was working on. So he and
17 I spoke constantly about what I was learning, what research was
18 being developed. I mean I'm sure that if I found a newspaper
19 article that said, you know, in The Wall Street Journal that
20 Venezuela was guarantying the debt, then I would have picked up
21 the phone and spoken to Mr. Richards. It was that kind of very
22 close sort of working relationship.

23 So he and I as lawyers probably came to -- I won't
24 speak for him, but me, I came to conclusions that the opinion
25 of the Attorney General were final and binding I'm sure before

1 I was prepared to put it down in writing. You know, attorneys,
2 once we put something in writing, it becomes something
3 different, right? So by the time I was willing to put it in
4 writing, I felt that I had done a pretty exhaustive analysis of
5 that issue. But that doesn't mean that I didn't come to that
6 conclusion earlier. But that doesn't mean that I would not
7 have shared it with Mr. Richards earlier. That does not mean
8 that Mr. Richards would not have been taking actions earlier
9 based on those discussions.

10 MR. SCHWARTZ: Your Honor, I am going to move to
11 strike. It's not a responsive answer to the question which
12 was: When did you first provide the opinion orally --

13 THE COURT: It was a long answer, but I think it was
14 responsive. The objection is overruled. It all had to do with
15 the timing.

16 MR. SCHWARTZ: It would be, perhaps, helpful if we
17 knew what the date was of this document.

18 MR. C. COOPER: The document does not bear a date. I
19 can show it to the Court.

20 THE COURT: Or to the witness. If he can look at
21 that, if that would help you to determine a date. Maybe it
22 won't. But see if that refreshes. Perhaps at the end if not
23 the beginning.

24 And, counsel, would there possibly be a cover letter
25 that went with this, that might have went with this? Nothing

1 that you found? That has been found?

2 THE WITNESS: I am sorry, Your Honor, I just don't
3 recall the date.

4 THE COURT: Thank you. That's the best we can do.

5 MR. SCHWARTZ: Actually, if I may suggest, there might
6 be something better that can be done, and that is consulting
7 the time records of Crabbe, Brown & James for the period in
8 question. We have been produced some of those, but they have
9 been redacted. So we don't know, but --

10 THE COURT: I think -- Tell me if you disagree --
11 there is significance to the date, you both agree.

12 MR. C. COOPER: Certainly.

13 THE COURT: Are those the time records, by any chance?

14 MR. C. COOPER: I don't have those.

15 THE COURT: You don't have those with you.

16 MR. SCHWARTZ: This has to be a knowable fact, that
17 law firms write down what they do --

18 THE COURT: I am sure it is retrievable somehow. Is
19 there any reason we can't cover this on cross and keep moving
20 forward?

21 MR. SCHWARTZ: I have no problem with doing that as
22 long as they figure it out in the meantime.

23 THE COURT: I think the date has to be determined.
24 You may continue.

25 BY MR. C. COOPER:

1 Q. To the date issue, let me ask you a question,
2 Mr. Alcalde. Did you provide your opinion to Skye Ventures
3 that the Attorney General's October 3, 2003, opinion was final
4 and binding before or after Skye Ventures purchased Bandagro
5 notes?

6 A. Before.

7 THE COURT: You don't recall whether that was in
8 writing or orally? We just saw the writing. Do you have any
9 recollection as to whether this was before that document that's
10 on the display right now?

11 THE WITNESS: Oh, yes. I mean as I said, Your Honor,
12 Mr. Richards and I worked very closely during this period of
13 time. I'm confident that throughout the process -- and just to
14 frame it for you, between when I first got involved in October
15 or November of 2003 to, let's say, June of 2004, that as we've
16 seen, you know I was working on analyzing all these laws and
17 talking to all these experts. I have met with Mr. Badell. And
18 I'm confident during that time period, Mr. Richards and I would
19 have discussed that I was fairly confident that this was a
20 final and binding decision. The experts that we had consulted
21 said it was a final and binding decision.

22 The memorandum in my mind didn't really have so much
23 of a legal significance with respect to whether or not I had
24 communicated to Mr. Richards that I felt it was final and
25 binding. He wanted it -- you know, we wanted to do a

1 memorandum for him because we were analyzing a number of issues
2 besides whether it was final and binding.

3 THE COURT: Thank you. I appreciate that. Thanks.

4 MR. C. COOPER: Could we provide the witness with
5 Exhibit 151, please, in Binder 7?

6 BY MR. C. COOPER:

7 Q. Mr. Alcalde, do you have Plaintiff's Exhibit 151?

8 A. Yes.

9 Q. Do you recognize this?

10 A. Yes, I do.

11 Q. What is Exhibit 151?

12 A. It's a letter that I sent to Tobias Nobrega with respect
13 to seeking payment of two promissory notes, Bandagro promissory
14 notes 3/12 and 4/12.

15 Q. Bandagro notes 3/12 and 4/12?

16 A. Yes.

17 Q. Those are not the notes at issue in this case. Why were
18 you demanding payment of notes 3/12 and 4/12?

19 A. Because those were the original notes that Skye Ventures
20 was going to obtain and in fact had obtained.

21 MR. C. COOPER: Could we hand the witness 153, please?
22 Also in Binder 7.

23 BY MR. C. COOPER:

24 Q. Mr. Alcalde, do you recognize Exhibit 153?

25 A. Yes.

1 Q. What is Exhibit 153?

2 A. It's a letter I sent on August 11, 2004, to Minister
3 Nobrega in which I informed him that we were, on behalf of
4 Skye, we were amending the demand for payment on notes 3/12 and
5 4/12 to notes 7/12 and 8/12.

6 Q. Between the date of the earlier letter, June 24, 2004,
7 and August 11, 2004, had you received any response to your
8 first demand letter?

9 A. I had not.

10 Q. And why were notes 7/12 and 8/12 substituted for notes
11 3/12 and 4/12?

12 MR. SCHWARTZ: Objection, no foundation.

13 THE COURT: It's his letter. Why don't we ask for a
14 foundation first.

15 BY MR. C. COOPER:

16 Q. Mr. Alcalde, in your letter you indicate that you're
17 amending the original demand to apply to notes 7/12 and 8/12,
18 instead of notes 3/12 and 4/12. Why did you write that?

19 A. Because we were substituting -- We had decided to obtain
20 notes -- or Skye Ventures had decided to obtain notes 7/12 and
21 8/12. There was an issue with respect to notes 3/12 and 4/12
22 perhaps having a lien against them.

23 THE COURT: So I am clear, the notes referenced in
24 151, is what you are talking about, possibly subject to liens?

25 THE WITNESS: Yes, notes 3/12 and 4/12 could have been

1 subject to a possible lien perhaps by Woodstrite.

2 BY MR. C. COOPER:

3 Q. To your knowledge, did Skye Ventures undertake any
4 efforts to get physical possession of the notes?

5 A. Yes.

6 MR. C. COOPER: If we could provide the witness with
7 Exhibit 148, please? 148, 149 and 150.

8 THE DEPUTY CLERK: 148, 149, 150.

9 BY MR. C. COOPER:

10 Q. Mr. Alcalde, do you recognize Exhibit 148?

11 A. Yes.

12 Q. 148 indicates that you were authorized to transport
13 certain Bandagro notes to the United States from Europe. Did
14 you do that?

15 A. No. I testified earlier that I went to Lake Como, and I
16 met with James Pavanelli, and I also took care of other
17 meetings. A Swiss attorney by the name of Schianchi had
18 possession of Skye's notes pursuant to an escrow agreement, and
19 I met with Schianchi. But I decided that for a number of
20 reasons, perhaps it was better that I not physically transport
21 the two promissory notes back myself. I didn't want to become
22 part of the, number one, the chain of custody. Number two, I
23 didn't want to, you know, be carrying the two notes of such
24 high value.

25 And so given the fact that the notes were under escrow

1 with Attorney Schianchi for Skye, I made the decision that what
2 we would do then we would just transport the notes. I would
3 have a courier transport the notes to Columbus.

4 Q. Did that happen?

5 A. Yes.

6 Q. What is Exhibit 149, please?

7 A. This is a letter from Attorney Schianchi referring to
8 the escrow agreement that I mentioned.

9 Q. Were notes 7/12 and 8/12 transported from Europe to the
10 United States?

11 A. Yes, they came to my office.

12 Q. What is Exhibit 150, please?

13 A. Exhibit 150 is my receipt of the notes when I took
14 possession of the notes.

15 Q. Mechanically, how were they transferred from Europe to
16 the United States?

17 A. They were physically carried by a courier who, you know,
18 had them in a bag, in a box. And I signed for it and handed
19 them over to me. And then we placed them in, I believe, we
20 placed them in a safety security box at, perhaps, Fifth Third
21 Bank.

22 Q. Did you ever receive a response to either the June 24,
23 2004, or the August 11, 2004, demand letters?

24 A. I did. I received a letter from a law firm in Florida
25 that said they were representing the Ministry of Finance.

1 MR. C. COOPER: Could we give the witness 154, please?

2 BY MR. C. COOPER:

3 Q. Mr. Alcalde, you have Exhibit 154. Do you recognize
4 this document?

5 A. Yes, this is the letter that I received from the law
6 firm of Ruden & McClosky, which make reference to my second
7 letter, the August 11 letter.

8 Q. You testified earlier that in addition to conducting due
9 diligence and providing Skye Ventures with a legal opinion on
10 the effect of the Attorney General's October 3, 2003, opinion,
11 you also served as a litigator on behalf of Skye Ventures in
12 this matter. Do you recall approximately when you filed the
13 complaint in this case?

14 Let me back up. Did you prepare a complaint in this
15 case?

16 A. Yes, I did.

17 Q. Do you recall approximately when it was filed?

18 A. Sometime in August or September of 2004.

19 Q. At the time you filed the complaint, what was your
20 understanding as to the legal effect of the Attorney General's
21 October 3, 2003, opinion?

22 A. That it was a final and binding opinion, that it, in
23 effect, validated the authenticity of the notes and the
24 requirement of Venezuela to pay the notes.

25 Q. And at the time you filed the complaint in this action,

1 what was your understanding as to the status of the Ministry of
2 Finance's August 8, 2003, report?

3 A. The Minister of Finance?

4 Q. Yes.

5 A. It was my understanding that that was the only report
6 upon which the Attorney General of Venezuela had rendered an
7 opinion pursuant to Article 56 of the Organic Law of Venezuela.

8 Q. Did you later receive information suggesting that the
9 Ministry of Finance had issued another report?

10 A. That the Minister of Finance had issued another report?

11 Q. Yes.

12 A. With respect to the issuance of a report, I only learned
13 that after I filed the litigation.

14 Q. After you filed the litigation, what did you learn about
15 whether or not the Ministry of Finance had issued another
16 report?

17 A. Well, let me be clear. Before I filed the litigation, I
18 knew that the Minister of Finance had -- was making noises or
19 making claims about not paying, okay? After I filed the
20 litigation, I received a motion to dismiss. Attached thereto
21 was a letter from the Minister of Finance to the Attorney
22 General of Venezuela -- sorry, I don't want to risk an
23 objection, but in which the opinion -- in which the Minister of
24 Finance sought a reconsideration by the Attorney General.

25 Q. To your knowledge, before Skye filed suit, to your

1 knowledge had Gruppo Triad received any Ministry of Finance
2 reports that were supposedly issued after August 8, 2003,
3 regarding Bandagro?

4 MR. SCHWARTZ: Objection, no possible foundation.

5 THE COURT: It would be a hearsay based foundation,
6 wouldn't it? This testimony, as I have been seeing it, has to
7 do with what was known to the plaintiff.

8 MR. C. COOPER: Yes.

9 THE COURT: For that basis only. So I don't think we
10 are at that level unless this is somehow linked to what the
11 plaintiff knew.

12 MR. C. COOPER: And that's what I'm trying to link
13 this to, Your Honor. Before they had filed, whether they had
14 received any investigation indicating the Gruppo Triad had
15 received a different report.

16 THE COURT: As long as it is not based on a hearsay
17 foundation, the witness can answer.

18 MR. SCHWARTZ: It's hard to see how it wouldn't be
19 hearsay under the circumstance.

20 THE COURT: They can try. If it's hearsay based, then
21 I agree with you.

22 BY MR. C. COOPER:

23 Q. Had you received any indication before filing suit that
24 the Ministry of Finance had issued any other reports and
25 notified Gruppo Triad of it?

1 MR. SCHWARTZ: Same objection. There is no
2 evidentiary bases for that question.

3 MR. C. COOPER: I will withdraw the question.

4 THE COURT: All right. I am not rushing you, but we
5 are right up to the break. If you have a few more questions,
6 we will continue. If you are going to take a while, we'll take
7 a break.

8 MR. C. COOPER: I probably got another 30 minutes.

9 THE COURT: Then we will take a 15-minute recess at
10 this time.

11 (Recess taken from 3:00 to 3:15.)

12 THE COURT: And, Mr. Cooper, you may proceed.

13 MR. C. COOPER: Thank you, Your Honor.

14 BY MR. C. COOPER:

15 Q. Mr. Alcalde, did there come a point in time where you
16 received an indication that the Attorney General of Venezuela
17 had issued another opinion after October of 2003?

18 A. Yes.

19 Q. Do you recall how you learned that?

20 A. It was filed in court, in here, in the pleadings.

21 MR. C. COOPER: Could we provide the witness with
22 Exhibit 210, please, in Binder 8?

23 COURTROOM DEPUTY CLERK: 210.

24 BY MR. C. COOPER:

25 Q. Mr. Alcalde, do you recognize Plaintiff's Exhibit 210?

1 A. Yes.

2 Q. And what is this, please?

3 A. It is the filing that was done by the Defendant,
4 Republic of Venezuela, in this case, attaching an opinion dated
5 8 December, 2003.

6 Q. When was this filed?

7 A. It was filed in April of 2005.

8 Q. Before April of 2005, had you received any indication
9 from any source about a December 2003 Attorney General opinion?

10 A. No.

11 MR. C. COOPER: Could we look at Exhibit 204, please?

12 COURTROOM DEPUTY CLERK: 204.

13 BY MR. C. COOPER:

14 Q. Mr. Alcalde, do you recognize Exhibit 204?

15 A. Yes. It's a decision of the Venezuelan Supreme Court in
16 a case filed by Woodstrite Investments Limited.

17 Q. What is the date of this opinion?

18 A. March 9, 2004.

19 Q. Did you develop an understanding as to what was at issue
20 in this dispute involving Woodstrite?

21 A. Yes.

22 Q. What was your understanding?

23 A. They were seeking a hearing in the Venezuelan Supreme
24 Court with respect to payment on the Bandagro notes.

25 Q. Did you review the decision of the Supreme Court of

1 Justice dated March 9th, 2004?

2 A. Yes.

3 Q. And is there any reference in this decision to a
4 December 2003 Attorney General opinion?

5 A. No.

6 MR. C. COOPER: Would you hand the witness Exhibit
7 205, please?

8 COURTROOM DEPUTY CLERK: 205.

9 BY MR. C. COOPER:

10 Q. Mr. Alcalde, do you recognize the document marked as
11 Plaintiff's Exhibit 205?

12 A. Yes. It's a copy of a newspaper article, July 2004,
13 from a newspaper in Venezuela.

14 Q. How did you obtain a copy of this newspaper article?

15 A. I would have been doing research on the Internet, as I
16 testified earlier, with respect to anything that was previously
17 published on Bandagro, both in English and Spanish.

18 Q. Do you recall when you obtained a copy of this July 1st,
19 2004, article?

20 A. I'm sure that I obtained it shortly after it came out.

21 MR. SCHWARTZ: Your Honor, I'm just going to note that
22 we have objections, through this document, on a variety of
23 grounds set forth in the pretrial order to authentication,
24 foundation, hearsay, relevance, and as to the translation of
25 this particular document.

1 THE COURT: Well, let me just ask Mr. Cooper.

2 So, this is not an ancient document, of course. This is
3 much more recent than 20 years.

4 Why isn't this hearsay and without an exception?

5 MR. C. COOPER: Well, Your Honor, we would -- I guess
6 our argument would be that, when the Attorney General gives an
7 interview in which she's asked questions about her opinion and
8 she doesn't indicate that she changed her mind at a point in
9 time when she should have --

10 THE COURT: I'm not trying to make your case for you.
11 Would this qualify as an admission?

12 MR. C. COOPER: I think it would.

13 THE COURT: Why don't you address that for me,
14 Mr. Schwartz? How do you see that?

15 MR. SCHWARTZ: Well, first of all --

16 THE COURT: She's still the Attorney General when the
17 statement's made?

18 MR. C. COOPER: Yes.

19 MR. SCHWARTZ: I believe she is, yeah.

20 THE COURT: All right.

21 MR. SCHWARTZ: But the problem with this document
22 concerns, in part, authenticity, foundation, and I believe
23 completeness of the document; but, also, if you were to
24 consider this -- and you may want to defer ruling on an
25 evidentiary objection to this document -- you'd need to read

1 this in light of the Attorney General's own testimony
2 concerning the interview itself, because she was deposed about
3 this.

4 THE COURT: All right. Then, why don't we -- we'll
5 note this, or we'll hold this for further resolution as far as
6 admissibility; but the witness can testify to it. If I strike
7 the exhibit, then we'll strike the testimony as well.

8 MR. SCHWARTZ: That's fine.

9 BY MR. C. COOPER:

10 Q. And, Mr. Alcalde, after you saw the filing in April of
11 2005 attaching the December 2003 opinion, what significance, if
12 any, did this July 1, 2004, article have?

13 A. Well, the significance of this article, in combination
14 with other articles and other information that I had developed,
15 was that it did not seem probable to me that the Attorney
16 General of Venezuela really issued an opinion in December of
17 2003.

18 MR. SCHWARTZ: Objection.

19 THE COURT: Yeah. I don't see any foundation at this
20 point. The objection's sustained.

21 BY MR. C. COOPER:

22 Q. Mr. Alcalde, you testified previously about news
23 articles in the fall of 2003 that created -- that indicated
24 there was controversy surrounding the Attorney General's
25 opinion. Do you recall that?

1 A. Yes.

2 Q. As a result of that controversy, did you undertake
3 efforts to try to find instances in which the Attorney General
4 spoke about, or addressed, the October 2003 opinion?

5 A. Yes.

6 MR. SCHWARTZ: Again, we have to have a limitation
7 there. If this occurred during Mr. Alcalde's tour of duty as
8 trial counsel in this case, I don't think that's relevant.

9 MR. C. COOPER: I can clarify.

10 THE COURT: Go ahead.

11 BY MR. C. COOPER:

12 Q. Mr. Alcalde, did you conduct this search during the
13 time, well, before you filed suit in this case?

14 A. Yes. I testified earlier that part of the investigation
15 that I did was, I saw articles that came out in the major
16 newspapers in Venezuela with respect -- that was heavily
17 criticizing the October 2003 opinion of the Attorney General.

18 I looked for articles -- I looked for every article that
19 I could find with respect to what the reaction was of the
20 Venezuelan Attorney General to what was without a doubt heavy
21 criticism in the press.

22 In addition to that, I knew that the General Assembly of
23 Venezuela had started its own investigation of the October
24 opinion, and --

25 Q. When did you learn that the --

1 A. I learned this while -- between the time that
2 Mr. Richards asked me to start looking at this and the time
3 that I gave him my opinion that the October opinion was final
4 and binding. So, I -- Once I learned that the General Assembly
5 was conducting an investigation, I looked for records and
6 documents regarding that investigation. I spoke to Miguel
7 Jacir, who actually testified during this investigation. And,
8 as I told you, I also had met principals of Woodstrite.
9 Woodstrite -- The two principals of Woodstrite --

10 THE COURT: If I could, let me just express a concern
11 here.

12 So, up to this point, up to the time Skye makes the
13 purchase, all of this information from Mr. Alcalde has to do
14 with what did they know, particularly surrounding the Attorney
15 General's opinion. But we're past the purchase point. So,
16 how -- I mean, we're getting into opinion testimony; aren't we?

17 MR. C. COOPER: Well, Your Honor, if I may --

18 THE COURT: Go ahead. Sure.

19 MR. C. COOPER: -- the Defendants in this case contend
20 that a Venezuelan Supreme Court decision issued in 2007
21 effectively allowed the Attorney General to change her opinion.
22 And it's our contention, and I think what we're trying to
23 present the evidence of, is that that opinion was essentially
24 not changed.

25 THE COURT: Well, and -- that could very well be a

1 triable issue in this case; but, as someone who started out as
2 counsel and then -- trial counsel, is that the best person, or
3 even a proper person, to establish those claims?

4 MR. C. COOPER: Understood, Your Honor. I think that,
5 with respect to Mr. Alcalde, some of the documents that I am
6 going to have him look at are things like the motion to dismiss
7 that would only be known to him as a result of it being filed
8 and him being trial counsel.

9 THE COURT: Well, I take notice of anything on the
10 Court's docket. You don't need to have anybody authenticate or
11 testify to that.

12 MR. SCHWARTZ: The things that have been filed in the
13 court on the docket need not be shown to Mr. Alcalde. That
14 just doesn't serve any purpose. They're on the Court's docket.

15 THE COURT: Right. In my mind, they're part of the
16 record in this case.

17 MR. SCHWARTZ: I don't disagree.

18 THE COURT: Right.

19 And, again, I think Mr. Alcalde knows it's not about
20 personal knowledge or qualifications. It's about capacity, is
21 what we're talking about.

22 MR. SCHWARTZ: And the Attorney General was deposed
23 about this subject. That's what you should be looking at.

24 THE COURT: Well, listen, this is a trial. We don't
25 take anybody's word at face value, right? The other side has a

1 right to contest it; but, certainly, the Attorney General's
2 opinion here would be important.

3 MR. SCHWARTZ: Well, I'm talking simply as a matter of
4 fact. Mr. Cooper took the Attorney General's opinion and asked
5 about this subject matter. He may suggest you should find her
6 testimony not credible. He can make that argument, but it's
7 not for Mr. Alcalde to be speculating about what did or didn't
8 happen.

9 THE COURT: I think we understand.

10 MR. C. COOPER: And, Your Honor, with the recognition
11 that the Court will take notice of filings in this case, Skye
12 will address that, then, in our written summation presented
13 after the court (sic) to try to knit that all together and draw
14 the links between it.

15 THE COURT: All right. Very good.

16 MR. C. COOPER: And, so, with that, Your Honor, let me
17 make sure I have -- Your Honor, I do have one document that
18 was -- it's discovery responses served in this case which would
19 not have been filed.

20 If I can get a stipulation from Mr. Schwartz, I won't
21 need to go into it: That Exhibit 219 are discovery responses
22 filed by the Defendants in this case in 2006.

23 THE COURT: All right. Mr. Schwartz, take a look,
24 then, and let me know if you have an objection.

25 MR. SCHWARTZ: I'll take a look if we can find it.

1 The only objections that we have listed to this document
2 in the pretrial order, Your Honor, are the objections that are
3 stated in the document itself. So, there is no question as to
4 the authenticity of the document.

5 THE COURT: All right. So, the objections haven't
6 been resolved. Subject to those objections, then, you have no
7 concern if I admit this?

8 MR. SCHWARTZ: Right.

9 THE COURT: All right. Then, that's what we'll do.

10 MR. C. COOPER: Very good. Thank you.

11 Then, in that case, Your Honor, I've concluded my
12 questions of Mr. Alcalde.

13 THE COURT: All right. Thank you.

14 Mr. Schwartz, when you're ready, you may cross-examine.

15 - - -

16 CROSS-EXAMINATION

17 BY MR. SCHWARTZ:

18 Q. Good afternoon, Mr. Alcalde.

19 A. Good day.

20 Q. You signed the original complaint in this case, right?

21 A. Most likely.

22 Q. Let's take a look at it and dispel any doubt about it.
23 It's Defendant's Exhibit 606. Should be in Binder 7.

24 So, this is our --

25 THE COURT: You need the binders; right?

1 MR. SCHWARTZ: Yes.

2 MR. LUCAS: Do you want us to hand the binders to the
3 witness? It's up to you.

4 COURTROOM DEPUTY CLERK: No.

5 MR. LUCAS: Okay. Thank you very much.

6 THE COURT: I am assuming this is one we can just show
7 to the witness. He can identify his own signature.

8 MR. SCHWARTZ: He should be able to do that. This
9 should be one signature in the case not in doubt.

10 THE COURT: Right.

11 BY MR. SCHWARTZ:

12 Q. All right. Do you have Defendant's Exhibit 606 in front
13 of you, Mr. Alcalde?

14 THE COURT: If you need that. You can also follow on
15 the screen.

16 THE WITNESS: Yes, I do have it.

17 BY MR. SCHWARTZ:

18 Q. All right. Let me ask you to turn to the last page of
19 that document, please.

20 A. (Witness complies.)

21 THE COURT: By the way, that was in Spanish before
22 this. This is on the Court's docket. I think you have a
23 translation there.

24 MR. SCHWARTZ: No. I think the translation is
25 the -- Oh, yeah. Look at that, actually. We have the

1 translation. And there are exhibits to this, of course.

2 THE COURT: If you look at the whole document -- it's
3 on the screen right now.

4 MR. SCHWARTZ: You don't have to go to the end of it.
5 It looks like the certificate of service, or something, is
6 there.

7 BY MR. SCHWARTZ:

8 Q. Take a look at the fifth page of this.

9 A. Yeah. That looks like my signature.

10 Q. You signed the original complaint, Docket #1 in this
11 long odyssey of a case, right?

12 A. Yes.

13 THE COURT: There it is.

14 BY MR. SCHWARTZ:

15 Q. And you participated in the drafting of this complaint,
16 correct?

17 A. Yes.

18 Q. And the complaint names only one plaintiff, DRFP LLC,
19 D/B/A Skye Ventures, correct?

20 A. Correct.

21 Q. And let's take a look at Paragraph 11 of this complaint.
22 Do you have that in front of you? It's on the third page.

23 A. Yes.

24 Q. And it states: At all times relevant herein, Skye is
25 the owner, holder, and bearer of the Notes Numbers 7/12 and

1 8/12 totaling \$100 million, right?

2 A. Yes.

3 Q. And, also, in the same paragraph, you pled that Skye
4 obtained those notes from Gruppo Triad-FCC-SPA, correct?

5 A. Correct.

6 Q. And Skye obtained those notes pursuant to a written
7 agreement with Gruppo Triad, correct?

8 A. Yes.

9 Q. When you filed this complaint, you did not attach that
10 written agreement, correct?

11 A. I think I attached the notes.

12 Q. Yes, you attached the notes; but you didn't attach the
13 agreement by which Skye obtained those notes from Gruppo Triad,
14 correct?

15 A. It doesn't look like I did.

16 Q. When you filed this complaint, Gruppo Triad had a
17 potential interest in the litigation proceeds, correct?

18 A. I don't know.

19 Q. Did you know then?

20 A. I don't know that I analyzed it that way.

21 Q. So, when you filed this complaint, did you have an
22 understanding of what percentage of the potential recovery in
23 the action Skye Ventures stood to gain?

24 A. That Skye? I don't know that I had -- Mr. Richards did
25 not share with me the names of all of the investors that were a

1 part of Skye or any other agreements he may have had. I don't
2 know that I was concerned about that.

3 Q. When you signed this complaint, did you know that Gruppo
4 Triad stood to gain tens of millions of dollars from this case
5 if the Plaintiff prevailed?

6 A. I don't know that I know that now.

7 Q. When you signed this complaint, did you know that Gruppo
8 Triad had, by far, the largest percentage share of any
9 potential recovery in this case?

10 A. No. I don't know that I know that now.

11 Q. You were still trial counsel for the Plaintiff in this
12 case in 2006, correct?

13 A. I was trial counsel until 2008.

14 Q. So, in 2006, you were still the trial counsel, right?

15 A. It sounds like it, right.

16 Q. And, while you were trial counsel, the Defendants served
17 their first set of document requests on the Plaintiff, right?

18 A. I don't recall, but if you say so.

19 Q. Do you recall, as trial counsel, responding to a set of
20 document requests in this case in 2006 or at any time?

21 A. I may have. I don't know.

22 Q. Let's take a look.

23 I'm going to show you a document that's an impeachment
24 exhibit designated by us as Impeachment Exhibit 2.

25 MR. SCHWARTZ: Is there a copy for the Judge?

1 MS. RODRIGUEZ: Yes.

2 THE COURT: You gave us two?

3 MS. RODRIGUEZ: Yes.

4 THE COURT: All right.

5 MR. SCHWARTZ: And for Skye?

6 BY MR. SCHWARTZ:

7 Q. Take a look at this document.

8 THE COURT: Just to make this easy, could you give us
9 the docket number on our filing system? That will make keeping
10 track of this a lot easier.

11 MR. SCHWARTZ: I can't, Judge, because this is a
12 discovery response.

13 THE COURT: That's right. It wasn't filed. Okay.
14 You're right. I'm mistaken.

15 Go ahead.

16 BY MR. SCHWARTZ:

17 Q. Mr. Alcalde, take a moment and look this document over.
18 Do you recognize this as responses by Plaintiff to the
19 Defendant's first request for production of documents?

20 A. Yes.

21 THE COURT: While you're looking it over, we need to
22 give this a designation.

23 MR. SCHWARTZ: All right. We had designated it here
24 as Impeachment Exhibit 2, but we can make it the next
25 Defendant's exhibit in line.

1 THE COURT: Well, the first exhibit was the complaint?

2 MR. SCHWARTZ: Yes.

3 THE COURT: Let's call this Impeachment Number 2.

4 MR. SCHWARTZ: Yeah.

5 The complaint, actually, is already marked as an
6 exhibit, Defendant's 606. But, the way we have this numbered,
7 it's our second impeachment exhibit.

8 THE WITNESS: I'm going to use the first, also.

9 THE COURT: That's fine.

10 BY MR. SCHWARTZ:

11 Q. All right. Mr. Alcalde, let's take a look, if we would,
12 at the 19th numbered page of this Impeachment Exhibit 2. Do
13 you have that?

14 A. Yes.

15 Q. And, so, you signed these discovery responses; and they
16 were served on the 20th of November, 2006, right?

17 A. Yes.

18 Q. All right. Let me ask you to take a look at the
19 second-to-last page of this document. Actually, to put this in
20 context for you, you'll see the last five pages of this exhibit
21 consist of an index of Plaintiff's responses to Defendants'
22 request for production of documents. Do you see that?

23 A. Yes.

24 Q. And this is an inventory, isn't it, of the documents
25 that you were producing in November of 2006? Is that fair?

1 A. Yes. Yes.

2 Q. And you've got columns and identification of the
3 document and the response to the request number and then the
4 Bates number, right?

5 A. Correct.

6 Q. All right. Now, take a look at the fourth of five
7 pages.

8 A. (Witness complies.)

9 Q. Do you have that page, sir?

10 A. Yes.

11 Q. All right. Look at the second-to-last entry. Do you
12 see it says: "Agreement dated 4-8-04 between Gruppo Triad and
13 Skye Ventures" --

14 A. Yes.

15 Q. -- and it lists some Bates numbers?

16 A. Yes.

17 Q. And it says, after the Bates numbers, "Redacted to
18 remove privileged information." Do you see that?

19 A. Yes.

20 Q. And then you identify the requests to which this
21 agreement was responsive. And those are Requests 16, 17 and 29
22 within the document request you were responding to, right?

23 A. Yes.

24 Q. And when you produced a copy of the agreement, the
25 written agreement between Gruppo Triad and Skye by which Skye

1 obtained the notes back in 2006, it was heavily redacted,
2 correct?

3 A. I haven't seen the agreement since whenever this was
4 filed. So, you'd have to show it to me.

5 Q. I'll be happy to have Ms. Rodriguez do so.

6 MR. SCHWARTZ: This, Your Honor, we've marked as
7 Defendant's Impeachment Exhibit 1.

8 BY MR. SCHWARTZ:

9 THE WITNESS: Okay. I have it.

10 BY MR. SCHWARTZ:

11 Q. Do you recognize this as the document that you produced
12 in November 2006 to the Defendants?

13 I'll make it easy for you, Mr. Alcalde. Look at the
14 Bates stamp numbers in the lower right-hand corner of
15 Impeachment Exhibit 1 and compare them to the Bates stamp
16 numbers in the inventory in Impeachment Exhibit 2. Do you see
17 they match?

18 A. Yes.

19 Q. So, Impeachment Exhibit 1, this is the version of the
20 agreement between Gruppo Triad and Skye that you gave to the
21 Defendants in November 2006, correct?

22 A. I presume so, yes.

23 Q. And, looking at this heavily redacted document on the
24 second page, you'll see there's an Article 2, Purchase
25 Consideration. Do you see that?

1 A. Yes.

2 Q. And, looking at this heavily redacted agreement, you
3 can't tell how much or how little Skye paid to Gruppo Triad to
4 obtain the purported notes, right?

5 A. That's correct.

6 Q. You obscured that information, correct?

7 A. Either I or someone under my direction.

8 Q. And you did so on the ground that that information
9 concerning the purchase consideration was privileged, right?

10 A. Correct.

11 Q. Can you conceive of any colorable basis upon which the
12 amount that a buyer paid a seller for promissory notes would be
13 privileged?

14 THE COURT: That's asking for a legal conclusion.
15 That's the first issue.

16 MR. C. COOPER: Your Honor, it seems like we've
17 devolving into a discovery dispute.

18 MR. SCHWARTZ: On the contrary.

19 THE COURT: Well, I don't want -- There may be some
20 fertile ground here, but asking for a legal opinion isn't going
21 to be the way to get to it.

22 MR. SCHWARTZ: Fair enough. Let me ask another
23 question.

24 THE COURT: I think all my rulings are fair, but go
25 ahead.

1 BY MR. SCHWARTZ:

2 Q. Regardless, you asserted privilege over the purchase
3 consideration, right?

4 A. Yes. I also don't think it was relevant.

5 Q. But that --

6 A. But, you know, had you filed a motion or your
7 predecessor filed a motion on it, I would have responded with
8 appropriate arguments.

9 Q. By the way, you didn't say anything about relevance when
10 you indicated why you did the redactions, right? You wrote
11 "Privileged." Is that fair?

12 A. Well --

13 THE COURT: You know, let me hear from both of you on
14 this, because the witness knows the answer, or maybe he
15 doesn't. But the real question I have -- Let's start with you,
16 Mr. Schwartz. Why is this information relevant?

17 MR. SCHWARTZ: You'll see --

18 THE COURT: Just -- Let's start --

19 MR. SCHWARTZ: Let me move to the next part of this
20 agreement.

21 THE COURT: Well, no. Let me get a quick answer to my
22 question.

23 Does this have to do with -- I mean, the analogy that is
24 coming to my mind is if you sold me a brand new BMW for \$2,000.
25 Is that where you're going with this?

1 MR. SCHWARTZ: That's part of it. But, then, I sold
2 it to you for \$2,000, and I got to drive it.

3 THE COURT: All right. Before we go any further, I
4 want to get this argument framed.

5 Mr. Cooper, do you still object to this being disclosed?

6 MR. C. COOPER: No. Actually, Your Honor, this
7 agreement was fully disclosed later in the case.

8 THE COURT: All right. I don't want to get into a
9 discovery dispute.

10 MR. SCHWARTZ: I'm not having a discovery dispute.

11 THE COURT: And then we'll get into -- Just go ahead
12 and ask the question. If he knows the answer, he can give it
13 to you.

14 MR. SCHWARTZ: That's fair enough.

15 BY MR. SCHWARTZ:

16 Q. Let's take a look at Bates stamp page 00861 contained
17 within Impeachment Exhibit 1. Do you see there is a section
18 entitled "The Terms"?

19 A. Yes.

20 Q. And that's completely obscured, right?

21 A. Yes.

22 Q. So, whatever the terms were were not revealed in 2006,
23 right?

24 THE COURT: But did you eventually get all this?

25 MR. SCHWARTZ: Yes.

1 THE COURT: I don't want to fight a discovery dispute
2 at trial.

3 MR. SCHWARTZ: It's not a discovery dispute, Your
4 Honor.

5 THE COURT: Well, you say that, but that's what it
6 sounds like. I'll give you a little bit of latitude here, but
7 that's my concern.

8 MR. SCHWARTZ: All right.

9 BY MR. SCHWARTZ:

10 Q. So, you couldn't tell from this Impeachment Exhibit 1,
11 the redacted agreement, how much or how little Skye paid or who
12 stood to gain from any litigation proceeds, right, from the
13 face of this document? Is that correct?

14 A. Well, you couldn't tell from the face of this document
15 the information that was obscured. I don't -- I mean, your
16 characterization is your characterization.

17 Q. All right. Let's take a look at Defendant's Exhibit
18 521. That's in Binder 6. Just let me know when you have that,
19 Mr. Alcalde.

20 A. I have it.

21 Q. You've got it?

22 A. Yes.

23 Q. All right. Let's take a look at the Purchase
24 Consideration section. It appears on page 00894.

25 A. Okay.

1 Q. And it says that Skye has transferred \$250,000 to Gruppo
2 or Schianchi, right?

3 A. That's what it says.

4 Q. And Skye will transfer, in 2004, another \$200,000,
5 right?

6 A. That's what it says in 2.2, yes.

7 Q. That's a total of \$450,000 for a hundred million dollars
8 of notes, right?

9 A. So far.

10 Q. And, if you do the math, that's less than half a cent on
11 the dollar of the face amount of the notes, right?

12 A. I don't know. I didn't calculate it.

13 Q. Well, \$450,000 as against a million. If it was one
14 million against a hundred million, it would be one cent on the
15 dollar, right?

16 A. Are you asking me to validate your math?

17 Q. I'm asking you whether one million is one percent of a
18 hundred million.

19 A. Yes.

20 Q. All right. So, \$450,000 is less than half a cent,
21 right?

22 A. Yes.

23 Q. All right. And now let's take a look at Exhibit A to
24 the fully -- the unredacted version that Mr. Cooper produced in
25 2014. Do you see page SKYE00898?

1 THE COURT: Is there an objection?

2 MR. C. COOPER: Your Honor, I'm just going to object
3 to the relevance of the testimony about the agreement between
4 Skye and Gruppo Triad and note that the redacted version was
5 filed, or provided, at a time when the parties were limited to
6 jurisdictional discovery. When that was lifted, Skye provided
7 the full agreement. I guess my objection is one of relevance.

8 THE COURT: Relevance.

9 This is my view: I've heard from -- I think I
10 understand your positions. There is some slight relevance
11 here. The purchase price has some bearing on the triable
12 issues here.

13 MR. SCHWARTZ: As does the waterfall distribution of
14 proceeds, which gives --

15 THE COURT: You're winning. So, you can proceed.

16 MR. SCHWARTZ: Fair enough. But I'm not going to
17 spend much more time on this. I just want to establish the
18 parameters we're working within here.

19 BY MR. SCHWARTZ:

20 Q. So, Mr. Alcalde, let's take a look at this nonrecourse
21 promissory note contained within Exhibit 521. Do you have
22 that?

23 A. Yes.

24 Q. And there is a section on page 899 entitled
25 "Distribution of Funds." Do you see that?

1 A. Yes.

2 Q. And you can see there, without going through the
3 minutiae of this waterfall, that Gruppo Triad is slated here to
4 receive \$39 million of potential proceeds in Section 2.1.d,
5 right?

6 A. That's what this document says, yes.

7 Q. All right. Let's turn to your interest in any potential
8 litigation proceeds.

9 You also stand to benefit financially if Skye wins this
10 case, right?

11 A. Well, that depends. I have an oral agreement -- I don't
12 have a written agreement -- with Crabbe, Brown and James. I
13 don't have a written agreement with Skye Ventures. I don't
14 have a written agreement with anyone, with the exception of a
15 small \$50,000 interest that Mr. Richards gave to me sometime in
16 2003 or '04. So, Mr. Richards has said to me that, if we're
17 successful, that he'll pay me for my work that I did during the
18 litigation; but that's the extent of it.

19 Q. So, of the hundred million dollars in face value of
20 Notes 7/12 and 8/12, your interest is for \$50,000 of the face
21 value, right?

22 A. That's what I have a written document to, yes.

23 Q. That's your baseline, right?

24 A. That's not my baseline. That's it.

25 Q. And, then, David Richards has told you, orally, that, if

1 this case works out for Skye, he'll pay you something else,
2 right?

3 A. Yes.

4 Q. And, in fact, while you were preparing for your
5 deposition in this case, you had a conversation with David
6 Richards shortly before the deposition, and he reiterated that
7 promise, right?

8 A. Yes, but I had a prior conversation with one of his
9 partners in which I made clear that I would testify in this
10 case because I'm an attorney and I feel like I have an ethical
11 duty if I'm subpoenaed or asked to testify in this case, but
12 I'm not testifying in this case because anyone has said that
13 I'm going to get paid any money.

14 Q. Let's talk about the scope of the due diligence that you
15 conducted in 2004. You did this work in connection with Skye's
16 possible acquisition of the purported Bandagro notes, right?

17 A. That's correct.

18 Q. And you learned during your due diligence there was all
19 kinds of information in the public domain, dating back to the
20 1980s, that there were fake Bandagro notes in circulation,
21 right?

22 A. Yeah. Well, I first learned that in the Attorney
23 General's opinion.

24 Q. And you learned that and had it confirmed during the
25 course of your due diligence, right?

1 A. I had it confirmed by the Ministry of Finance report and
2 the four prior investigations. Some of the newspaper articles
3 that I read merely repeated what was said in some of those
4 things.

5 Q. So, you knew there were fake notes in circulation?

6 A. Yes. So did Venezuela.

7 Q. And you learned that Venezuela had issued public
8 statements that warned against fake Bandagro notes, right?

9 A. Yes. I testified to that.

10 Q. But your investigation, you say, didn't look into
11 whether the Bandagro notes at issue in this case were fake,
12 correct?

13 A. That's right.

14 Q. You wanted --

15 A. My focus was on the opinion of the Attorney General and
16 its legality.

17 Q. And you weren't concerned about whether the notes were
18 fake, correct?

19 A. That was the job of the Attorney General and the
20 Minister of Finance, to concern themselves with that issue.

21 Q. I'm asking you about your job, Mr. Alcalde.

22 A. I'm telling you what my job -- My job was to determine
23 if the opinion of the Attorney General was final and binding.

24 Q. And you didn't care if the notes were fake, right?

25 A. I don't believe the notes are fake. I believe the notes

1 have been validated by the Government of Venezuela as a
2 legitimate obligation of Venezuela by a legal process.

3 Q. And you told Mr. Lucas in your deposition on May 18th,
4 2015, that you weren't concerned whether the notes were fake,
5 correct?

6 A. But I also -- Well, I'm not concerned by that because
7 that was taken care of by the Attorney General; but I believe
8 I've also stated that I believe that these notes have -- In
9 fact, in my opinion, since you're asking my opinion, these
10 notes are super validated. These notes have gone through a
11 process that no other notes in Venezuela have gone to. They've
12 gone through a process where the Attorney General of Venezuela
13 has validated these notes as legitimate obligations of the
14 Government.

15 Q. During the time you did your investigation, you didn't
16 care, one way or the other, whether they were fake. Isn't that
17 what you've testified to? Do I need to pull the deposition
18 out?

19 A. You can pull it out. My job was to determine if the
20 opinion of the Attorney General that these notes were legal and
21 binding was a final decision. I couldn't -- I was never going
22 to be able to find out if these notes had been issued by
23 Bandagro or not. There is conflicting evidence in the record
24 as to whether they were issued or not.

25 Q. In your view, whether the purported notes that Skye

1 obtained from Gruppo Triad are fake is not important to the
2 case that you filed on behalf of Skye, correct?

3 A. It's not the issue.

4 Q. Now, these Bandagro notes, numbers 7/12 and 8/12 that
5 are at issue in this case, they were allegedly issued in 1981,
6 right?

7 A. Correct.

8 Q. And you didn't investigate the circumstances surrounding
9 the alleged issuance of the notes, right?

10 A. You mean other than what I've said, other than the fact
11 that I studied what was happening in Venezuela at that time,
12 other than the fact that I found articles that said that
13 Bandagro was issuing notes in millions of dollars, other than
14 the fact that I found an article from the *Wall Street Journal*
15 that said that Venezuela was backing the debt of Bandagro,
16 other than the fact that I studied the Minister of Finance
17 report and the Attorney General's opinion saying that these
18 notes had been issued by Bandagro? No, I guess I didn't do
19 anything beyond that.

20 Q. I think we're going to have to take a look at a
21 deposition transcript, Mr. Alcalde.

22 A. Sure.

23 Q. I'm sure we have them in the courtroom. We'll pull out
24 Volume I of your deposition from May 18th, 2015. It may take
25 us a moment to distribute these in the courtroom.

1 Mr. Alcalde, so, we're looking at the first volume of
2 your deposition taken on May 18th, 2015. Please turn to page
3 28.

4 A. (Witness complies.)

5 Q. Do you have that? It will continue on to 29.

6 A. Yes.

7 Q. Do you see, at Line 17, Mr. Lucas asked you: Based upon
8 the due diligence that you did in this case, do you have a view
9 as to whether the notes at issue in this case are fake?

10 Do you see that question?

11 A. Yes.

12 Q. And do you see you answered, starting on Line 23 of page
13 28: Well, I do not. I did not conduct due diligence to
14 determine what happened in 1981 or '82 when these notes were
15 allegedly issued. Okay. That wasn't the focus of my due
16 diligence.

17 Did Mr. Lucas ask you that question, and did you provide
18 that answer?

19 A. Yes, he did. But I also see, down on Line 10 of page
20 28, I stated to Mr. Lucas what I just stated to you: That I
21 believe that these notes actually have a super indicia of
22 genuineness and validity, if you'd care to read that.

23 Q. The alleged notes at issue are identified as ICC 322,
24 Notes 7/12 and 8/12, right?

25 A. Right.

1 Q. And they allegedly were signed by three individuals,
2 correct?

3 A. Right.

4 Q. The names of those individuals are Elbano Fontana
5 Nieves -- right?

6 A. Yes.

7 Q. Do you recognize that name?

8 A. Yes.

9 Q. Pascual Puigbo Morales, do you recognize that name?

10 A. Yes.

11 Q. And Waldemar Cordero Vale, right?

12 A. Yes.

13 Q. During your investigation, you learned that all three of
14 these alleged signers had denied signing ICC 322 notes, right?

15 A. I learned that they had denied signing them, and I
16 learned that they had also admitted to signing them.

17 Q. Prior to Skye's acquisition of the purported notes, you
18 never attempted to contact any of the three alleged signers to
19 ask them if they signed the notes, right?

20 A. That's right.

21 Q. And, at any time, you've never spoken to Elbano Fontana
22 Nieves, right?

23 A. I have not.

24 Q. And, while they were alive, you never spoke to Pascual
25 Puigbo Morales or Waldemar Cordero Vale, correct?

1 A. I have not.

2 Q. And you've never spoken to a gentleman by the name of
3 Luis Ugueto, did you?

4 A. I don't think so.

5 Q. Do you have any idea who he is?

6 A. I don't recall at the moment.

7 Q. And you didn't interview anyone at Bandagro who worked
8 there in the early 1980s to investigate if the purported notes
9 were ever issued by that bank, right?

10 A. I did not.

11 Q. And, as you've testified, you decided you'd never be
12 able to figure out what actually happened in 1981 regarding the
13 alleged issuance of these purported notes, correct?

14 A. Well, I might have had if I'd have had five or ten
15 million dollars to do it with, but that wasn't my task.

16 Q. Based on the resources and the time you had available to
17 you, you determined you'd never be able to get to the bottom of
18 that, right?

19 A. Based on the resources that I had and the task that I
20 had, it was to determine the legality and finality of the
21 Attorney General's opinion.

22 Q. So, Skye acquired these purported notes in 2004 from
23 Gruppo Triad, right?

24 A. Yes.

25 Q. And the leader of Gruppo Triad was someone named James

1 Paolo Pavanelli, correct?

2 A. Yes.

3 Q. Before Skye obtained the notes, you spoke with
4 Pavanelli, correct?

5 A. Yes.

6 Q. And you asked Pavanelli how did Gruppo Triad acquire the
7 purported Bandagro promissory notes, right?

8 A. Yes.

9 Q. And Pavanelli was talking about having bought not just
10 these two notes for a hundred million dollars, but over a
11 billion dollars, in face amount, for these notes, right?

12 A. Pavanelli was talking about the notes that were a part
13 of the claim or that were the claim that Dr. Jacir filed in
14 Venezuela.

15 Q. And the aggregate face value of all those purported
16 notes exceeded one billion dollars, right?

17 A. I thought it was one billion.

18 Q. Okay. And Pavanelli told you he'd paid some 200 to 300
19 million dollars in some combination of cash, jewels, and maybe
20 negotiable instruments to obtain those million dollars in
21 purported notes, right?

22 A. Yes.

23 Q. All right. Let's take a look at DEF 564 and DEF 565.

24 I'll tell you in a moment what Binder they're in, Mr.
25 Cooper. It's eight.

1 It appears I misspoke in my last question, according to
2 my colleagues. So, just to be clear, Pavanelli told you that,
3 in order to obtain the \$1 billion in aggregate face amount of
4 these purported Bandagro notes, he'd paid some 200 to 300
5 million dollars in cash, jewels, and maybe negotiable
6 instruments. That was his claim, right?

7 A. I thought that's what you asked me. Yes.

8 Q. Okay. So did I, but apparently I misspoke. I think you
9 understood my question anyway.

10 All right. So, let's look at DEF 564 and 565. Are
11 those available to you?

12 COURTROOM DEPUTY CLERK: Volume --

13 MR. SCHWARTZ: It's Volume #7. Sorry.

14 THE WITNESS: Which tab?

15 BY MR. SCHWARTZ:

16 Q. It's 564 and 565, Mr. Alcalde.

17 A. Okay.

18 Q. These two are of a piece (sic). Just let me know when
19 you've got 564.

20 A. I have it.

21 Q. So, 564 is a copy of an e-mail that you sent to
22 Pavanelli on or about May 26th, 2004, right?

23 A. Yes.

24 Q. And 565 is a copy of an e-mail from Pavanelli, to you,
25 on the same day, right?

1 A. Yes.

2 Q. And Pavanelli's e-mail to you, which is 565, is a
3 response to questions that you posed in 564, right?

4 A. Yes.

5 Q. Let's look at page 564 -- I'm sorry -- Exhibit 564, the
6 second page. And, there, you asked Pavanelli a series of seven
7 numbered questions, right?

8 A. Yes.

9 Q. And Pavanelli provided some responses in 565, right?

10 A. Yes.

11 Q. Now, before we go through these specific questions, when
12 you first started looking into Bandagro notes, you were
13 representing Skye Ventures exclusively, right?

14 A. Correct.

15 Q. But, by the time you exchanged these e-mails with
16 Pavanelli in May of 2004, you were also representing Gruppo
17 Triad, right?

18 A. There was a period of time when we were representing
19 Gruppo Triad, yes.

20 Q. And that period of time included May 26th of 2004,
21 right?

22 A. I told you I didn't have a lot of recollection about
23 when I represented him, but that sounds right.

24 Q. All right. So, at this time, you're representing both
25 the potential buyer and the potential seller of these purported

1 notes, correct?

2 A. Yes.

3 Q. And Pavanelli is a client of yours when you're having
4 this exchange with him, right?

5 A. Yes.

6 Q. All right. So, looking at your questions, the first
7 thing you wanted to know was when did Pavanelli buy the notes,
8 right?

9 A. Yes.

10 Q. And Pavanelli told you, in Defendant's Exhibit 565, the
11 notes had been purchased in June 1987, right?

12 A. Yes.

13 Q. And then your second question to Pavanelli, naturally
14 enough, was who sold the notes to you, right?

15 A. Yes.

16 Q. And he told you, in Defendant's Exhibit 565, that the
17 seller was Mr. Alfredo Guillermo Agaar -- A-g-a-a-r -- a
18 Venezuelan acting for and on behalf of some undisclosed
19 Venezuelan businessmen, right?

20 A. Yes.

21 Q. And let's skip, now, down to your fourth question.

22 You asked Pavanelli: Why did you only pay \$250 million
23 U.S. when the notes had a face value of over one billion U.S.?
24 In other words, what was the situation with the notes that
25 caused them to sell at such a discount?

1 Right?

2 A. Yes.

3 Q. And that question seemed to disturb Pavanelli, right?

4 MR. C. COOPER: Objection.

5 THE COURT: Well, it says what it says. I think it's
6 an improper question; but it has, I'll note, five or six
7 question marks at the end. And that may take care of it.

8 BY MR. SCHWARTZ:

9 Q. Let's take a look at what Pavanelli told you in his
10 answer number 4. First he answered with a question, right? He
11 said: Who told you we paid 250 million, followed by five
12 question marks.

13 Right?

14 A. Well, that's what the e-mail reads, yes.

15 Q. And then he said: That is false. I never said that.
16 Exclamation point. We paid much more.

17 Right?

18 A. Right.

19 Q. And, as to your question about the discount rate,
20 Pavanelli didn't respond at all, right?

21 A. That's the answer that he gave.

22 Q. And he didn't address the discount rate, correct?

23 A. He said he paid much more. So --

24 Q. Did he provide you any explanation of why he paid
25 whatever he paid in relation to the supposed face value?

1 A. No.

2 Q. Now, you followed up with Pavanelli to find out how much
3 more was allegedly paid than the 250 million, right?

4 A. I don't know. I may have.

5 Q. Well, didn't you testify at your deposition that you
6 probably did?

7 A. Like I said, I don't know. I probably did. I don't
8 know. Maybe I did.

9 Q. In any event, you never got any further information
10 along those lines from Pavanelli, right?

11 A. That's correct.

12 Q. So, beyond having been told that the purchase price was,
13 quote, much more than 250 million, end quote, you have no idea
14 what Pavanelli claims to have paid for the notes, right?

15 A. No. And I stopped representing him at some point.

16 Q. And, when you say "no," you mean you just don't know,
17 right?

18 A. I don't know.

19 Q. Now, turning back to Defendant's Exhibit 564, you had a
20 seventh question. It was actually a series of questions. You
21 asked Pavanelli some questions about whether he followed ICC
22 rules for presentment and payment as set forth on the face of
23 the notes in any prior attempt to get paid; if so, when was
24 that, what banks did he use, what was the result of his
25 efforts, and do you have any documentation with respect to

1 those prior efforts. You asked him all those questions, right?

2 A. I asked the questions that are in this e-mail, yes.

3 Q. And his answer to all those questions in Defendant's
4 Exhibit 565 was one word, right?

5 A. Yes.

6 Q. Pavanelli didn't identify any banks, and he didn't tell
7 you the results of any of these efforts, correct?

8 A. Not that I recall, no.

9 Q. And he didn't identify any documentation, here or
10 elsewhere, concerning any such collection efforts, right?

11 A. Not that I recall.

12 Q. Now, as we've seen in --

13 A. But, I mean, other than the collection effort through
14 Dr. Jacir. That was the one that I was focused on.

15 Q. That's not what you were asking about here in Question
16 7, right? You were asking about something else, correct?

17 A. That -- That's correct, but I want to make sure
18 that -- You asked me whether I identified any collection
19 efforts. Well, the collection effort that is the central issue
20 of this trial is the collection effort through Dr. Jacir and
21 the administrative process in Venezuela.

22 Q. I understand that's your stance, Mr. Alcalde, and you'll
23 look for as many opportunities as possible to say it; but, for
24 the time being, as to these questions here concerning prior
25 collection efforts, you were asking about something else,

1 right?

2 A. Well, I don't know that. I don't know that I -- because
3 it's possible that I was trying to find out his involvement in
4 one of the prior collection efforts in Venezuela. I don't
5 know. But fair enough. You know. I did not -- With respect
6 to prior collection efforts, prior collection efforts that I
7 can for sure testify, is the collection effort that was
8 rejected by the Minister of Finance initially. Then we have
9 the collection effort through Dr. Jacir. And I believe that
10 one of the prior four collection efforts that are noted in the
11 Ministry of Finance, the one, perhaps, with Triad F.F.C., may
12 have been a collection effort by Pavanelli, but I'm not
13 positive.

14 Q. You think one of the four --

15 A. It's possible. I don't know. It's possible, because
16 Pavanelli's position was that they kept getting rejected.

17 We know for a fact that he was rejected by the Minister
18 of Finance initially, and that's why Jacir wrote to the office
19 of the President.

20 Q. And you think one of those four prior reports --

21 A. I don't know. Maybe. Maybe.

22 Q. You have to let me finish the question.

23 Do you think that one of the four prior reports
24 mentioned in the Ministry of Finance report of August 2003 had
25 something to do with Pavanelli or Gruppo Triad?

1 A. Possible, but I don't know.

2 Q. Now, as we've seen in Defendant's Exhibit 565, Pavanelli
3 told you that someone named "Agaar" was the seller, acting on
4 behalf of some undisclosed Venezuelan businessmen, right?

5 A. Yes.

6 Q. You never contacted any such person to ask about the
7 alleged sale of notes to Pavanelli, right?

8 A. I did not.

9 Q. You were, however, curious about the identity of the
10 undisclosed businessmen, weren't you?

11 A. I may have been.

12 Q. Didn't you tell Mr. Lucas on May 18th, 2015, at your
13 deposition, that you were curious about the undisclosed
14 Venezuelan businessmen?

15 A. If I did, I may have been, yes.

16 Q. Regardless, you never determined the identity of any
17 undisclosed Venezuelan businessmen who used some guy named
18 Agaar to sell over a hundred -- over a billion dollars of notes
19 to Pavanelli, right?

20 A. I did not.

21 Q. Ultimately, just like you determined you'd never be able
22 to figure out what happened in 1981, you never determined to
23 your satisfaction how Gruppo Triad got its hands on the
24 purported Bandagro notes, right?

25 A. Other than with Pavanelli -- Other than what Pavanelli

1 said, no.

2 Q. And you concluded you were never going to be able to
3 figure that out, right?

4 A. I concluded that: Probably was not going to find out,
5 and it wasn't relevant to what my task was.

6 Q. And you concluded that you weren't going to be able to
7 figure that out even though Gruppo Triad was your client,
8 right?

9 A. For a short period of time.

10 Q. When Gruppo Triad was your client, you determined you'd
11 never be able to figure out how that client obtained these
12 purported promissory notes with an aggregate face amount of
13 over one billion, correct?

14 A. Other than what Pavanelli said, no.

15 Q. Do you still have Volume I of your deposition from May
16 18th, 2015, in front of you?

17 Let me ask you to turn to page 212 within that Volume I,
18 please.

19 A. Yes.

20 Q. And, specifically, at Line 20 --

21 A. Yes.

22 Q. Bear with me a second.

23 Do you see Mr. Lucas asked: At the time Skye purchased
24 the purported notes, did you get to the bottom of what happened
25 with respect to the alleged transaction that Gruppo Triad said

1 they were involved in in acquiring the purported notes?

2 Do you see that question?

3 A. Yes.

4 Q. And, then, turning to page 213, your answer was, quote:
5 I never determined to my satisfaction how Gruppo Triad acquired
6 the notes, if that's the import of your question, because it
7 wasn't something that I was going to be able to really figure
8 out.

9 Did Mr. Lucas ask you that question, and did you provide
10 that answer in May of 2015?

11 A. Yes. And, in the prior page, I also told Mr. Lucas that
12 I concluded that I was going to rely on the opinion of the
13 Attorney General, as opposed to me spending 20 years doing what
14 the Attorney General of Venezuela had already done.

15 Q. One of the things you did in due diligence, you told Mr.
16 Cooper, was to collect news articles about Bandagro, right?

17 A. Yes.

18 THE COURT: I think you called the witness Mr. Cooper.
19 I don't know if you meant that, but that's all right.

20 MR. SCHWARTZ: No. I meant that he told Mr. Cooper.

21 THE COURT: All right. Very good.

22 BY MR. SCHWARTZ:

23 Q. I'll rephrase the questions, this question:

24 One of the things that you testified on during your
25 direct examination was that you collected news articles about

1 Bandagro in the course of your due diligence, right?

2 A. Yes.

3 Q. And you tried to gather every relevant news article
4 relating to Bandagro you could find, right?

5 A. That I could find, yes.

6 Q. And, in the course of that effort, you searched an
7 online news source called *Quinto Dia*, correct?

8 A. That was one of them.

9 Q. And however advanced the Internet was in 2004, *Quinto*
10 *Dia* articles were readily available online at that time, right?

11 A. I was able to find articles published by *Quinto Dia*.

12 Q. All right. I'm going to ask you to look at Joint
13 Exhibit 30, which is in Binder 1. It's a special binder. At
14 least mine has a different color.

15 MR. SCHWARTZ: Thank you, Andy.

16 BY MR. SCHWARTZ:

17 Q. Just let me know, Mr. Alcalde, when you've got Exhibit
18 30, Joint Exhibit 30.

19 A. Yes.

20 Q. So, this is an article from *Quinto Dia* that was
21 published for the week of December 19 to 26, 2003. And we've
22 included here in this exhibit both the Spanish original and the
23 English translation, and the translation comes first. Do you
24 see that?

25 A. Yes.

1 Q. I'd like to direct your attention to the first page of
2 Exhibit 30, beginning with the third paragraph.

3 THE COURT: Let me just back you up for one moment.

4 So, the online service is *Quinto Dia*; is that correct?

5 MR. SCHWARTZ: Yes.

6 THE COURT: And what newspaper would this be
7 taken -- Is this their publication, or it picking up another
8 newspaper article, or can you tell?

9 MR. SCHWARTZ: Well, Mr. Alcalde might be better
10 positioned to answer that question than I am, since he did the
11 due diligence.

12 THE COURT: All right.

13 THE WITNESS: It was called -- The entity used the
14 name *Quinto Dia* to publish its articles.

15 THE COURT: So, this would be an online publication?

16 THE WITNESS: Yes.

17 THE COURT: And you've heard of this company?

18 THE WITNESS: Well, I learned about it. They were
19 publishing a lot. Yeah.

20 THE COURT: All right. Very good. Thank you.

21 MR. C. COOPER: Your Honor, we just note an objection
22 to the hearsay in this document.

23 THE COURT: Well, I don't want to make your case,
24 Mr. Schwartz; but this is in response to what he found. You
25 want to show what else he could have found, pretty much. Is

1 that --

2 MR. SCHWARTZ: What he did find and he could have
3 found.

4 THE COURT: All right. Mr. Cooper, you get the last
5 word.

6 MR. C. COOPER: Sure. So, it's still hearsay; but it
7 goes to -- It doesn't come into the substance of --

8 THE COURT: Yes. It would be the same as the other
9 articles were used.

10 MR. SCHWARTZ: At least for the time being, this would
11 appear to be the flip side of the same coin we were tossing
12 most of the day.

13 THE COURT: Very good. Yes. We see eye to eye.

14 BY MR. SCHWARTZ:

15 Q. All right. So, I'd like to direct your attention, if I
16 could now, to the third paragraph on the first page of Exhibit
17 30, Mr. Alcalde. It starts with the words "In May 1987"?

18 A. Yes. I see it.

19 Q. And, starting in that paragraph and continuing for at
20 least through the next paragraph, this *Quinto Dia* article
21 describes an incident that occurred at JFK Airport, in New York
22 City, in May 1987, that involved fake Bandagro notes, correct?

23 A. Yes.

24 Q. And, during the course of your due diligence, you
25 learned that there had been such an incident, correct?

1 A. I learned that such an incident was reported, yes.

2 Q. And what you learned had been reported was that the
3 incident involved a woman, right?

4 A. Yes.

5 Q. And that woman who was involved in the incident,
6 carrying the purported Bandagro notes, may have been working
7 for Pavanelli, right? You learned that?

8 A. I learned that that was reported, yes.

9 Q. And you also heard that the woman was carrying some
10 substantially blank Bandagro notes and was stopped by U.S.
11 Customs, right?

12 A. I learned whatever was reported.

13 Q. And that's what was reported, right?

14 A. Yeah. Whatever is reported here, I learned it. I read
15 this. I downloaded this article.

16 Q. And, during the course of your investigation, after you
17 learned about this incident at Customs in New York in May 1987,
18 you asked Pavanelli about it, right?

19 MR. C. COOPER: Your Honor, I'm going to note an
20 objection. The way the question is being phrased, there is a
21 lack of foundation; characterizing it as if the incident
22 occurred.

23 THE COURT: Right now, we're still focused on what did
24 Mr. Alcalde know. That's all we're doing at this point.

25 MR. SCHWARTZ: The flip side of the same coin. I'm

1 not trying to prove this happened through Mr. Alcalde. We'll
2 do that through another witness or two.

3 THE COURT: Go ahead. You may answer the question.

4 MR. SCHWARTZ: Do you remember the question?

5 THE WITNESS: The question was, did I ask Pavanelli
6 about it?

7 BY MR. SCHWARTZ:

8 Q. Yeah. During your investigation, after you learned
9 about this incident or learned that it had been reported, you
10 asked Pavanelli about it, right?

11 A. Well, I mean, has the attorney/client privilege been
12 waived by Pavanelli or his estate? I don't know.

13 Q. Well, since you testified about it at your deposition, I
14 think that the horse has left that barn.

15 A. Well, I think it was -- I think we discussed the issue
16 then, but maybe if you can show me what I said at my deposition
17 --

18 Q. Sure. Turn, if you would, please, to page 138 within
19 the same volume you've had.

20 A. (Witness complies.)

21 Q. Let me catch up with you.

22 A. Yes. All right. I'm looking at the page.

23 Q. All right. I'm trying to catch up with you. Just hold
24 on one second, please.

25 All right. So, take a look at Line 19 on page 138.

1 You'll see Mr. Lucas asked, quote: So, prior to the time Skye
2 purchased the purported notes from Gruppo Triad, you heard
3 there was this Custom incident, and so you asked Pavanelli
4 about it, right? End quote.

5 Do you see that question?

6 A. Yes.

7 Q. And you answered, quote: I think so, yeah. End quote.
8 Correct?

9 A. Well, wait a minute. Which page are you doing? 136?

10 Q. I was on 138, starting on Line 19.

11 A. Okay.

12 Q. Continuing through 23.

13 A. Now -- because there's questions prior to that.

14 Q. Feel free to read as much, for context, as you think is
15 necessary.

16 A. Okay. So, I'm at Line 19 and Line 23 of page 138.

17 Q. All right. And Mr. Lucas asked you: Prior to the time
18 Skye purchased the purported notes from Gruppo Triad, you heard
19 there was this Custom incident, and so you asked Pavanelli
20 about it, right?

21 And you answered: I think so, yeah. Right?

22 A. Yes.

23 MR. C. COOPER: Your Honor, we -- Sorry.

24 BY MR. SCHWARTZ:

25 Q. And Pavanelli told you that this was an incident

1 involving Bandagro notes, correct?

2 A. I -- Yes.

3 Q. And he told you that U.S. Customs had stopped the woman
4 who was carrying Bandagro notes, right?

5 A. Well, I don't know that I recall much more than what I
6 said here. I said here that I didn't have much recollection of
7 it than what I said here.

8 Q. Pavanelli told you this was all a big misunderstanding,
9 right?

10 A. Probably, yeah.

11 Q. Take a look at page 132, Line 17 to 19. Isn't that what
12 you testified to last May?

13 A. Which page?

14 Q. Page 132, Line 17 through 19.

15 A. Yes.

16 Q. And, according to Pavanelli, he never did anything
17 wrong, right?

18 A. Pavanelli -- If your question is did Pavanelli ever say
19 that he created false Bandagro notes and was trying to sell
20 those, no, he never said that.

21 Q. Didn't you testify at Lines 23 and 24 that Pavanelli,
22 quote, never did anything wrong and he was always a victim, end
23 quote?

24 A. Well, yes. Isn't that what I just said?

25 Q. Isn't what -- what you were saying, he told you?

1 A. And isn't that what I just said?

2 Q. If we're in agreement, we can move on.

3 When you talked to Pavanelli about this 1987 Customs
4 incident, did he tell you that the notes Customs seized had no
5 note number assigned to them?

6 A. I don't know that he told me that.

7 Q. Did he tell you that the date of issue for the notes was
8 blank?

9 MR. C. COOPER: Same objection to foundation, Your
10 Honor.

11 THE COURT: What's the basis for this?

12 THE WITNESS: I don't know -- I don't know anything
13 about --

14 THE COURT: No. Wait a minute.

15 What's the basis?

16 MR. SCHWARTZ: Well, the basis is substantial
17 documentary evidence that will be introduced in the case. And
18 we're not at that part of the case yet, but these are facts
19 that we will prove.

20 THE COURT: Well, through another witness. Foundation
21 is what I'm talking about.

22 MR. SCHWARTZ: Well, the question is whether he was
23 told these things. That happened. We will prove it.

24 THE COURT: But you've asked several questions.

25 All right. Finish this up.

1 BY MR. SCHWARTZ:

2 Q. I'm not sure if there was an answer to the last
3 question.

4 Did Pavanelli discuss with you that the date of the
5 issue for those notes was blank?

6 A. I don't know anything about the incident other than what
7 was reported in these articles, this article, or what Pavanelli
8 said. I don't know anything else about it.

9 Q. Let me ask you just one more question. Did you ever
10 find out that the blank notes seized by Customs in 1987 are
11 identical in form to the two purported notes at issue in this
12 case?

13 MR. C. COOPER: Same objection, Your Honor.

14 THE WITNESS: Like I said --

15 THE COURT: There is a lot of assumptions in that
16 question that he says he doesn't know anything about. So, the
17 framing of the question is improper.

18 MR. SCHWARTZ: All right. I'll move on to this.

19 BY MR. SCHWARTZ:

20 Q. Did Pavanelli ever tell you that, after the notes were
21 seized by Customs in 1987, he wrote a letter to Customs asking
22 that the notes be sent back to him?

23 A. I don't know if he did or not.

24 Q. All right. Let me ask you to look at Defendant's
25 Exhibit 558, Binder 7, I believe.

1 MS. RODRIGUEZ: Yes.

2 COURTROOM DEPUTY CLERK: Number 7 binder?

3 MR. SCHWARTZ: Yes.

4 Just a moment, please. I'm off by one. I'm sorry. I
5 think it's going to be Binder 6.

6 COURTROOM DEPUTY CLERK: This should be 6. Yes.

7 BY MR. SCHWARTZ:

8 Q. All right, Mr. Alcalde. Do you have Defendant's Exhibit
9 558?

10 A. Yes.

11 Q. This is a printout of Gruppo Triad's website. You can
12 see the date, at the bottom, of 5-20, 2004. When you --

13 MR. C. COOPER: Note an objection to foundation, Your
14 Honor.

15 THE COURT: Well, start with that, if you would,
16 please.

17 BY MR. SCHWARTZ:

18 Q. In the course of your due diligence in 2004, or when you
19 were representing or considering representing Gruppo Triad, did
20 you ever access its website?

21 A. I may have.

22 Q. All right. Let me ask you to take a look at the certain
23 aspect of this, and we'll see if it refreshes your
24 recollection.

25 Take a look at the page LP.

1 "LP," by the way, stands for Lara Pavanelli. Take a
2 look at LP01963, at the top of the page.

3 A. We're talking about Exhibit 558?

4 THE COURT: Page 2, yeah.

5 THE WITNESS: The second page of that? Okay.

6 BY MR. SCHWARTZ:

7 Q. Actually, it's the third page. Sorry.

8 A. Okay.

9 Q. LP019. It's the second piece of paper, but it's the
10 third page.

11 A. Okay.

12 Q. LP01963. And take a look at the discussion at the top
13 of that page and see if that refreshes your recollection as to
14 whether you accessed this Gruppo Triad website in 2004.

15 A. I don't -- I don't recall this. I mean, I'm not saying
16 that I didn't, but I just don't have a specific recollection of
17 this document.

18 Q. All right. Independent of the discussion I've shown
19 you, you have no recollection, one way or the other, of whether
20 you looked at the Gruppo Triad website?

21 A. I may have looked at the Gruppo Triad website, but I
22 don't have a specific recollection of really what it looked
23 like or what information was on there.

24 Q. Do you remember ever seeing any type of written
25 explanation by Gruppo Triad of the May 1987 incident at the JFK

1 Airport in New York?

2 A. I wasn't focused on those incidents.

3 Q. Independent of what you were focused on, do you have any
4 recollection of having seen anything written by Gruppo Triad
5 about it?

6 A. Like I said, I -- I don't -- No, I don't have any
7 recollection of that.

8 Q. So, regardless, you did nothing to investigate this May
9 1987 Customs incident other than talking to Pavanelli, right?

10 A. I was investigating the Attorney General's opinion.

11 Q. I know you like to say that, but I'm asking different
12 questions. You didn't --

13 A. Well --

14 THE COURT: Wait. Wait. This is becoming very
15 argumentative.

16 Listen to the question. Limit your answer to the
17 question.

18 Go ahead.

19 BY MR. SCHWARTZ:

20 Q. You didn't do anything other than talk to Pavanelli to
21 investigate the May 1987 Customs incidence you had heard about,
22 right?

23 A. I did not.

24 Q. Prior to Skye's acquisition of the two purported
25 Bandagro notes, you learned that Pavanelli was a convicted

1 criminal, right?

2 A. I learned that there were allegations that he had been
3 convicted in London, but I never saw a judgment or a conviction
4 with respect to that, but I assumed that that was probably
5 true.

6 Q. In fact, Pavanelli, himself, admitted to you he had been
7 convicted in London for a crime involving fake Bandagro notes,
8 right?

9 A. Yes.

10 Q. And Pavanelli told you that he went to jail for that
11 crime, right?

12 A. Yeah. I think he spent some time in jail. I think he
13 said that.

14 Q. Did you ever come to learn from Pavanelli or any other
15 source that the allegations that led to him being convicted and
16 sentenced to jail in London included charges that he conspired
17 with Alfredo Guillermo Agaar?

18 MR. C. COOPER: Objection. Foundation.

19 THE COURT: There isn't a foundation. Do you want to
20 prepare one before you drop that question?

21 MR. SCHWARTZ: Well, I could show the indictment and
22 the conviction to Mr. Alcalde, but --

23 THE COURT: Do you know who this person is, the name?

24 THE WITNESS: I think that's the person that he said
25 that was involved in -- the intermediary with purchasing the

1 notes.

2 THE COURT: All right.

3 THE WITNESS: Right.

4 THE COURT: You may continue.

5 BY MR. SCHWARTZ:

6 Q. And that -- Pavanelli claimed to have purchased the
7 notes in 1987, right, --

8 A. Yes.

9 Q. -- the same year as that Customs incident, correct?

10 A. Yes.

11 Q. Did you ever come -- Well, let me ask you this question
12 to make it simple: You never attempted to contact any court in
13 London to get any information about Pavanelli's U.K.
14 conviction, correct?

15 A. I did not.

16 Q. And you did not interview anybody who was involved in
17 Pavanelli's London criminal case or conviction, correct?

18 A. I did not.

19 Q. You also learned at some point that Pavanelli was
20 involved in a criminal matter in Italy, correct?

21 A. Yes, but I don't recall if that was after I filed the
22 litigation. I mean, there was the issue with Fabbiani in that
23 report, if that's what you're referring to.

24 Q. Well, that report, or one of those reports that Mr.
25 Cooper had you look at -- Let me rephrase that question.

1 All those Fabbiani reports that Mr. Cooper had you look
2 at you say that you saw before Skye obtained the purported
3 notes, right?

4 A. Yes.

5 Q. Okay. And one of those Fabbiani reports, you'll recall,
6 was from a criminal court in Turin, right?

7 A. Yes.

8 Q. And you understood, did you not, that Pavanelli
9 was -- I'm sorry -- that Fabbiani was an expert who had been
10 engaged as part of the defense of Pavanelli against criminal
11 charges in Italy, right?

12 A. Yes.

13 Q. And the Italian court convicted Pavanelli despite
14 whatever Fabbiani had to say, right?

15 A. I don't know that that's accurate.

16 Q. You also discovered in your due diligence an
17 article -- and this is before Skye obtained the purported
18 notes -- you found an article stating that Pavanelli had been
19 accused of being an international swindler, correct?

20 A. Yes.

21 Q. And that article linked Pavanelli to the husband of
22 former vice-presidential candidate Geraldine Ferraro, right?

23 A. Yes.

24 Q. He had gotten himself in hot water with various criminal
25 authorities, correct?

1 A. Who's "he"?

2 Q. Geraldine Ferraro's husband.

3 A. Yes.

4 Q. And you learned there was some involvement of Pavanelli
5 in connection with him, right?

6 A. Yes.

7 MR. C. COOPER: Objection to the foundation. Matter
8 of form --

9 THE WITNESS: Well --

10 THE COURT: Wait. Wait.

11 Go ahead.

12 THE WITNESS: I'm sorry.

13 MR. C. COOPER: Maybe it's more a matter of the form
14 of the question. If there is an implication in each instance
15 that he's establishing the truth of --

16 THE COURT: Right. This goes to the issue of what was
17 relayed to the client -- that's all -- and what could have been
18 known and relayed to the client, both.

19 MR. SCHWARTZ: That's the case. It's really just the
20 mirror image of the examination this morning.

21 THE COURT: All right.

22 MR. SCHWARTZ: All right.

23 BY MR. SCHWARTZ:

24 Q. I'm going to ask you to look at Defendant's Exhibit 77.
25 It should be in Binder 2. No. It's in 1. I'm sorry.

1 MR. C. COOPER: 77?

2 MR. SCHWARTZ: Yes. It's in Binder 1. It appears,
3 with the creation of the joint exhibit binder, our numbers are
4 all off by one. But we'll straighten that out by tomorrow.

5 THE COURT: So, we're looking at the unsuccessful 1984
6 Democratic vice-presidential nominee who, through her husband,
7 is allegedly connected to a person who might have sold the
8 bonds to the Plaintiffs in this case. That's a bit --

9 MR. SCHWARTZ: Truth is stranger than fiction in this
10 case.

11 THE COURT: Well, it's a bit of an attenuation, too;
12 isn't it?

13 MR. SCHWARTZ: Well, no. You're going to see the
14 antithesis of attenuation in a moment.

15 THE COURT: I'll give you a little bit of latitude
16 here, but note my scepticism.

17 MR. SCHWARTZ: All right. Noted.

18 I need to access this Exhibit 77 before I can question
19 Mr. Alcalde about it, and I have an unwieldy binder. So, bear
20 with me one second.

21 THE WITNESS: You would have to put it at the end of
22 this volume.

23 MR. SCHWARTZ: I know. It's causing me enormous
24 trouble, and apparently you as well. I'm working my way there
25 slowly.

1 BY MR. SCHWARTZ:

2 Q. After all that effort with the binder, my question for
3 you, Mr. Alcalde, is whether Defendant's Exhibit 77 is the
4 article you found concerning Pavanelli being accused of being
5 an international swindler.

6 A. I have to -- I mean, as I recall, it was an article in
7 *Vanity Fair*, but -- It's been a long time since I've read the
8 article.

9 Q. Let me help you look at this. If you look at page 1808
10 of this article --

11 A. Yes. Okay.

12 Q. -- in the right-hand column, there is a paragraph that
13 starts with the words "In addition to giving bad advice."

14 A. Yes, I see it. Yes. This is the article -- yeah. This
15 is the article that I found.

16 Q. All right. So, in the middle of that paragraph that I
17 just directed your attention to is a reference to Pavanelli,
18 right?

19 A. Yes.

20 THE COURT: Is that the same first name? That's the
21 person we've been talking about?

22 MR. SCHWARTZ: That's a very good question.

23 THE COURT: I have his name down as a different first
24 name. Is it James?

25 MR. SCHWARTZ: His names is James Paolo Pavanelli.

1 BY MR. SCHWARTZ:

2 Q. And you understood, Mr. Alcalde, that from time to time
3 James Paolo Pavanelli was just known as Paolo Pavanelli, right?

4 A. I only called him James.

5 THE COURT: There are actually two Pavanellis there.
6 One is James, and one is Paolo.

7 MR. SCHWARTZ: It's the same person. You'll see ample
8 evidence in this case.

9 The Plaintiff is not going to stipulate to that?

10 MR. C. COOPER: I'm not going to stipulate to the
11 content of -- It's an article that's describing different --

12 MR. SCHWARTZ: All right. We'll leave that to another
13 day.

14 BY MR. SCHWARTZ:

15 Q. In any event, you see there is a reference to a James P.
16 Pavanelli in the same paragraph, right?

17 A. Yes.

18 Q. And this is the article you found, right?

19 A. Correct.

20 Q. And, in the same sentence as a reference -- containing
21 the reference to James P. Pavanelli, you see there is some
22 mention of an assortment of fugitives and phony Italian nobles?
23 Do you see that?

24 A. Yes.

25 Q. This is what you found in 2004, right?

1 A. Okay. This is, like, the fourth time. Yes.

2 Q. Okay. Let me show you another article from the same
3 time frame. We'll see if you found that one.

4 This is 75, but it's Defendant's Exhibit 75. So, you've
5 only got to turn back two this time.

6 Here is a *Wall Street Journal* reprint from October 29,
7 1984. And, to make this easy with you -- easy for you --
8 direct your attention to page 2 of this, 2 of 4; and, in the
9 last full paragraph on page 2, carrying over to page 3, there
10 is a discussion of somebody referred to as -- I'm looking for
11 the name --

12 THE COURT: Let me just interrupt you for a minute.

13 When we had the final pretrial conference -- I'm
14 addressing this to both sides here.

15 You understand the claim for estoppel here is out. So,
16 we walked through, in some detail, the triable issues.

17 As I understood the testimony from this witness, it
18 focused on the Attorney General's report and whether or not
19 there could be reliance on that report, and also we're going to
20 hear some testimony about what the legal effect is of that
21 report.

22 This goes to more generalized due diligence, doesn't it?
23 That's really not at play in this case.

24 MR. SCHWARTZ: Well, this is something we began to
25 talk about during the pretrial conference, and I'm very glad to

1 have the discussion.

2 THE COURT: Yeah. And I remember saying that those
3 claims were out, and you asked me to dismiss them, and I did.

4 MR. SCHWARTZ: Yeah.

5 THE COURT: But now we're trying them again.

6 MR. SCHWARTZ: Well, no. You see, that's where we
7 disagree. And I think it's something that requires
8 clarification --

9 THE COURT: All right.

10 MR. SCHWARTZ: -- because -- and it's a very important
11 issue. To some extent, it's raised by the motion in limine.
12 And it, in our view, is a reflection --

13 THE COURT: Let's go back.

14 The first question in this case is, are these notes
15 fraudulent or not. And, then, if the answer is -- Well, if the
16 answer is "no," then we have one conclusion. If the answer is
17 "yes," then the next argument of the Plaintiff is, but you can
18 still rely if other conditions are met. And I know you
19 disagree with that, but their position is you can rely on the
20 Attorney General's opinion.

21 As I understand Mr. Alcalde's testimony, it has to do
22 with that opinion, by and large, not in general; but you've
23 told me that, if the notes were fraudulent, it doesn't matter
24 how much due diligence you did later; and, also, the Attorney
25 General's opinion had no effect. You agree with that, right?

1 MR. SCHWARTZ: Yes.

2 THE COURT: So tell me how this becomes a triable
3 issue.

4 MR. SCHWARTZ: Okay. Here is the rub: The Plaintiff
5 is asserting some ill-formed theory, in our view, that has a
6 reliance component. We are --

7 THE COURT: But you've prevailed on that. That is out
8 as far as the decisions up to this point.

9 MR. SCHWARTZ: Yes. We agree with that; but, once
10 that's out, the question of the alleged reasonable reliance on
11 the Attorney General's opinion goes out with it. There's no
12 place in the case for a reliance claim by the Plaintiff.

13 THE COURT: Well, no offense, but you're asking to
14 reopen the decision I've already made. I've already held
15 that's a triable issue.

16 MR. SCHWARTZ: Okay. So, if it is a triable issue,
17 which --

18 THE COURT: No offense. If it's a triable issue, it's
19 not up to you to decide how broad it is to be tried. It's an
20 issue involving the Attorney General's opinion. That's it. It
21 doesn't open the context of everything else that you'd like to
22 bring in.

23 MR. SCHWARTZ: Well, I hope we could advocate for a
24 broader sense of the issue in that regard because -- I have to
25 take a step back, and this is a very, very important issue as

1 far as what's going to come down the road in a long trial.

2 At the risk of repeating what I said at the pretrial
3 conference, final pretrial conference, there's only one
4 remaining cause of action in this complaint: Default on a
5 promissory note. Reliance is not an element of that claim.

6 THE COURT: Exactly. So, I'm looking at a document
7 that only goes to the issue of reliance.

8 MR. SCHWARTZ: Okay. But the Plaintiff is taking the
9 position in support of a theory that doesn't exist -- a cause
10 of action that doesn't exist in the case that it can prove it
11 reasonably relied on the Attorney General's opinion, and
12 provisionally --

13 THE COURT: But I ruled on that, and I said they
14 can't.

15 MR. SCHWARTZ: Okay. Now, honestly, we are at a loss
16 to understand what claim that pertains to; but, passing that
17 for a moment --

18 THE COURT: Wait a moment. We need to stop right
19 here.

20 MR. SCHWARTZ: Okay.

21 THE COURT: We're not in a deposition.

22 MR. SCHWARTZ: All right.

23 THE COURT: And you're not arguing with me. I've made
24 those decisions. They're done. You're not going to reargue
25 them. Am I clear about that?

1 MR. SCHWARTZ: Yes.

2 THE COURT: All right.

3 MR. SCHWARTZ: So, here --

4 THE COURT: This can go to what they presented in
5 terms of how they could reasonably rely on the Attorney
6 General's opinion, but this is two steps away. And
7 that's -- that's the ruling.

8 This is the last document. This is in the middle of a
9 political campaign, too, by the way. This is on the op ed
10 page. It's not a newspaper article. It's in the *Wall Street*
11 *Journal*. I take note of that as well.

12 We're very far afield. You can finish up with this
13 document and then move forward.

14 MR. SCHWARTZ: All right. You're not interested in
15 further argument. I'll stop.

16 THE COURT: No.

17 MR. SCHWARTZ: Okay.

18 All right. Let me just regroup for a moment.

19 BY MR. SCHWARTZ:

20 Q. So, my question, very simply, was, for you, Mr. Alcalde,
21 is this another article that you found on the same general
22 subject as the last one we looked at?

23 A. I don't know that I found this article, but I do note
24 that it's essentially -- If you look at Exhibit 77, the author
25 of that is James Ring. If you look at the bottom of Exhibit

1 77, on the left-hand corner it says that James Ring is a member
2 of the editorial board of the *Wall Street Journal*. Okay?

3 If we go back to Exhibit 75, we see that this is -- the
4 byline is James Ring Adams at the *Wall Street*. So, I don't
5 know that this article or opinion or whatever it is adds
6 anything to what I found in the prior article.

7 Q. All right. Let's change subjects and talk about ICC 322
8 promissory notes. That's what the notes in this case are
9 designated as, right?

10 A. Yes.

11 Q. And the notes indicate on their face that they'll be
12 governed by the terms and conditions of the International
13 Chamber of Commerce, right?

14 A. Yes.

15 Q. As part of your due diligence, did you look for news
16 articles from the ICC regarding alleged ICC 322 notes?

17 A. I may have, yes.

18 Q. Let me show you Defendant's Exhibit 1, which undoubtedly
19 is in Binder 1. Do you have that one in front of you, Mr.
20 Alcalde?

21 A. Yes.

22 Q. This is a news release from the United States Council of
23 the International Chamber of Commerce dated January 5th, 1980.

24 A. Yes.

25 MR. C. COOPER: Note an objection to the foundation.

1 THE WITNESS: Yeah. I'm accepting what it says.

2 THE COURT: We need a foundation at some point, but go
3 ahead.

4 MR. SCHWARTZ: Yes.

5 BY MR. SCHWARTZ:

6 Q. Did you find this article in the course of your due
7 diligence in 2004?

8 A. I may have, but I think that this is -- If I'm reading
9 the date correctly, it looks like October 7, 2004. So, it
10 would have been after I filed the lawsuit.

11 Q. Well, it looks like the document was filed at some point
12 in the litigation and somebody printed it out on 10-7-04. But
13 I'm not asking you whether you printed it out on that date.
14 I'm asking you whether you found it in doing your due
15 diligence.

16 A. Oh, I don't recall.

17 Q. All right. Now we're going to switch to Defendant's
18 Exhibit 50.

19 A. Is it the same binder?

20 Q. Same binder.

21 COURTROOM DEPUTY CLERK: D5?

22 MR. SCHWARTZ: Fifty.

23 COURTROOM DEPUTY CLERK: Oh, fifty. I'm sorry.

24 Thank you.

25 BY MR. SCHWARTZ:

1 Q. Do you have that one, Mr. Alcalde?

2 A. Yes.

3 Q. So, this is an article from the *International Financial*
4 *Law Review*, 1982, entitled "Sham Promissory Notes: An
5 International Fraud." Did you find this article?

6 A. I don't know if I found it or not, but I had no doubt
7 that there were fake ICC notes in the international market
8 because the Attorney General said that in her opinion, and so
9 did the Minister of Finance. It would not have been shocking
10 to me to find that there were fake ICC notes in the
11 international market.

12 THE COURT: Mr. Cooper?

13 MR. C. COOPER: At the risk of acquiescing through
14 silence, we wanted to -- we had raised an objection to
15 documents that were produced after the discovery deadline. I
16 think this was one of them.

17 THE COURT: All right. So noted.

18 MR. SCHWARTZ: I am assuming you don't need a response
19 to that at this point?

20 THE COURT: No.

21 MR. SCHWARTZ: Your Honor, it's five of 5:00. I don't
22 know if you're planning on running to 5:00 or 5:30.

23 THE COURT: Well, if this is a good place to break --

24 MR. SCHWARTZ: It's a good place for me to break.

25 THE COURT: All right.

1 Counsel, we will adjourn, and we'll start tomorrow at
2 9:00 a.m. I'll see you then. With that, we'll be in recess.

3 MR. SCHWARTZ: Your Honor, I think we have something
4 scheduled at 8:45 tomorrow. There was a motion regarding a
5 subpoena.

6 THE COURT: Be seated for just a moment.

7 This is the gentleman in the Cleveland area, right?

8 MR. SCHWARTZ: Yes.

9 THE COURT: And that's still unresolved? I guess the
10 question to you is whether you are going to call him or not.

11 MR. SCHWARTZ: We may very well. I think, as with the
12 parallel scenario we had with Ms. Reash, the most efficient
13 thing to do would be to defer this until when we start our
14 case. The issue may turn out to be moot.

15 THE COURT: The problem is going to be we'll need to
16 keep him on call. We can defer it, but he can't.

17 MR. SCHWARTZ: Unless we pick a date certain that's
18 convenient for him, ten days hence or something like that.

19 THE COURT: All right. Why don't we discuss his
20 schedule. Unless you can -- With the other witness, you were
21 able to do some stipulations as far as documents. Is that
22 possible with this witness?

23 MR. SCHWARTZ: Well, I don't think it's going to work
24 out with the prior -- with the first one, but we've tried.
25 With this one, I think it's doubtful. If we're going to call

1 him, I don't think we're going to stipulate. If we dispense
2 with him, then it becomes --

3 THE COURT: Well, he has filed a motion regarding the
4 inconvenience aspect. We will address that again tomorrow. I
5 have a preliminary view on that. I'll be willing to hear from
6 both of you as far as how much inconvenience to make him come
7 from Cleveland to here for live testimony.

8 Is that going to be a contested issue on the Plaintiff's
9 side?

10 MR. C. COOPER: It really wasn't our issue. Sorry,
11 Your Honor.

12 THE COURT: Right. He raised it.

13 MR. SCHWARTZ: I just wanted to make sure we knew it
14 was there at 8:45.

15 THE COURT: All right. So, I'll see you at 8:45 after
16 all.

17 With that, we'll be in recess.

18 (Proceedings were concluded at 4:57 p.m.)

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WITNESS INDEX

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

PLAINTIFF's:

Luis M. Alcalde	7	171
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C E R T I F I C A T E

We, Laura Samuels, Denise Errett, Lahana DuFour,
Shawna Evans and Darla Coulter, do hereby certify that the
foregoing is a true and correct transcript of the proceedings
before the Honorable Edmund A. Sargus, Jr., Judge, in the
United States District Court, Southern District of Ohio,
Eastern Division, on the date indicated, reported by us in
shorthand and transcribed by us or under our supervision.

s/Laura L. Samuels, RPR
Laura L. Samuels, RPR
Official Federal Court Reporter
March 16, 2016

s/Denise N. Errett, FCRR
Denise N. Errett, FCRR
Official Federal Court Reporter

s/Lahana DuFour, RMR, CRR
Lahana DuFour, RMR, CRR
Official Federal Court Reporter

s/Shawna J. Evans, RMR
Shawna J. Evans, RMR
Official Federal Court Reporter

s/Darla J. Coulter, RMR, CRR
Darla J. Coulter, RMR, CRR
Former Official Federal Court Reporter